

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

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FRANK J. KELLEY, Attorney General.  
for the State of Michigan, FRANK J.  
KELLEY, ex rel MICHIGAN NATURAL  
RESOURCES COMMISSION, MICHIGAN  
WATER RESOURCES COMMISSION and  
HOWARD A. TANNER, Director of  
the Michigan Department of  
Natural Resources,

WILLIAM J. GIOYAN  
P-014020

Plaintiffs,

v.

Civil Action No.  
79-1-1-1 CE

CHEMICAL RECOVERY SYSTEMS, INC.,  
a Michigan Corporation, M.S.&N.  
CORPORATION, a Michigan Corporation,  
NOLWOOD CHEMICAL CORPORATION, a  
Michigan Corporation, EDWARD W.  
LAWRENCE, a Michigan Resident,  
A.H. MAGNUS, JR., a Michigan  
Resident, ARTHUR B. McWOOD, JR.,  
a Michigan Resident, CHARLES H.  
NOLTON, a Michigan Resident,  
and PETER J. SHAGENA, a Michigan  
Resident,

Defendants.

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Roger A. Schwartz P 30010  
Assistant Attorney General  
Attorney for Plaintiffs

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COMPLAINT FOR INJUNCTIVE RELIEF,  
PENALTIES, AND DAMAGES

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"It is hereby certified that  
no other actions arising from  
the instant transaction or  
occurrence are currently be-  
fore said court or have been  
previously dismissed by said  
court."

GCR 1963, 926.5(a)

FRANK J. KELLEY  
Attorney General

Stewart H. Freeman  
Assistant Attorney General  
in Charge

Roger A. Schwartz  
Assistant Attorney General

Environmental Protection Division  
720 Law Building  
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FRANK J. KELLEY, Attorney General  
for the State of Michigan, FRANK J.  
KELLEY, ex rel MICHIGAN NATURAL  
RESOURCES COMMISSION, MICHIGAN  
WATER RESOURCES COMMISSION and  
HOWARD A. TANNER, Director of  
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CORPORATION, a Michigan Corporation,  
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Michigan Corporation, EDWARD W.  
LAWRENCE, a Michigan Resident,  
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Resident, ARTHUR B. McWOOD, JR.,  
a Michigan Resident, CHARLES H.  
NOLTON, a Michigan Resident,  
and PETER J. SHAGENA, a Michigan  
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Defendants.

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COMPLAINT FOR INJUNCTIVE RELIEF,  
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Plaintiffs, by their attorneys Frank J. Kelley,  
Attorney General, and Stewart H. Freeman and Roger A.  
Schwartz, Assistant Attorneys General, complain as follows:

I. INTRODUCTION

1. This Civil Action seeks to compel Defendants to  
remedy Defendants' toxic chemical contamination of the  
Trouton Drain (which flows past Defendants' property in  
Romulus, Michigan, through the residential area of the City  
of Romulus, and into Ecorse Creek, see Exhibit 1), of  
Ecorse Creek and of the groundwaters of this State, caused

by Defendants' direct and indirect discharges of hazardous and toxic materials, including Benzene, 1, 1 Dichloroethane, 1, 2 Dichloroethane, Dichloromethane, Methyl Ethyl Ketone, Methyl Isobutyl Ketone, Perchloroethylene, Phenol, Toluene, 1, 1, 1 Trichloroethane, Trichloroethylene, Vinyl Chloride, and Xylene, several of which chemicals are known carcinogens, into the surface and groundwaters of this State, by dumping said hazardous and toxic materials onto the ground or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise maintaining, sand-lined seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials. In particular, Plaintiffs seek preliminary and permanent injunctive relief which would, inter alia, compel Defendants to: 1) completely eliminate the contaminated, sand-lined seepage lagoons on their property, known as the "vinyl pond" and the "east pond," and safely remove, transport, and dispose of the contaminated liquid, semi-solid, and solid materials contained therein, and at least 83,800 cubic yards of contaminated soil from beneath the sand-lined seepage lagoons and from other areas of Defendants' property; 2) backfill the excavated areas with clean fill and regrade the surface of their property to prevent future contamination of Trouton Drain and Ecorse Creek; 3) remove all contaminated sludges and abate any existing sediment contamination of Trouton Drain and Ecorse Creek, and return Trouton Drain and Ecorse Creek to the state in which they existed prior to the commencement of operations on Defendants' property; 4) extend and make all corrective modifications of the groundwater intercept tile system on Defendants' property necessary to assure that all contaminated groundwater flows to and is collected by the groundwater intercept

tile; 5) reduce and maintain their inventory of waste drums to no more than 2,500 at any one time, and install the secondary containment for all storage areas necessary to prevent future contamination of Trouton Drain and Ecorse Creek. In addition, Plaintiffs ask that Defendants be ordered to: 1) implement and complete the foregoing measures pursuant to a firmly scheduled timetable, and be assessed a civil penalty of ten thousand dollars (\$10,000) for each day they are in violation of any provision of that timetable; 2) pay all damages necessary to compensate the people and the State of Michigan for Defendants' pollution, impairment, and destruction of the environment; 3) pay all costs of this action including the costs and salaries paid state employees for the investigation and enforcement of this litigation; 4) scrupulously comply with all state statutes, rules, and permits governing Defendants' operations; 5) post a one million dollar (\$1,000,000) pretrial bond in order to protect the Court's continued equitable jurisdiction and authority.

2. The Defendants in this case are three corporations and five individuals. The three Defendant corporations demonstrate such common ownership, officers and directorship, control, management, and operation, and do business in such a manner in which their "corporate entities" are used as a blind, instrumentality or device to avoid, evade, or violate the law and its intent, and their legal obligations thereunder, to contravene, defeat, or override public convenience, public policy, and public welfare, and to prejudice and injure innocent third parties, so that all three corporate and all five individual Defendants must be considered jointly and severally liable for the actions taken and legal wrongs committed, as hereinafter alleged.

## II. JURISDICTION

3. This Complaint is brought pursuant to the Water Resources Commission Act, 1929 PA 245; MCLA 323.1 et seq; MSA 3.521 et seq; particularly sections 3, 6(a), 6(c), 7(1), and 10; the Environmental Protection Act, 1970 PA 127; MCLA 691.1201 et seq; MSA 14.528(201) et seq; in accordance with the provisions of Const 1963, art 4, §§51 and 52; in accordance with such other statutes as may be applicable; and, pursuant to the legal and equitable powers bestowed upon the Circuit Court under the common law to abate public nuisances.

## III. PARTIES

4. Attorney General Frank J. Kelley is the duly elected Attorney General of the State of Michigan holding such office pursuant to the provisions of Const 1963, art 5, §21. He is the head of the Department of the Attorney General created by the Executive Organization Act, 1965 PA 380; MCLA 16.150; MSA 3.29(50). The Attorney General possesses both statutory and common law powers to bring this action on behalf of the People of the State of Michigan and its governmental agencies.

5. Plaintiff Michigan Natural Resources Commission supervises the Michigan Department of Natural Resources pursuant to 1965 PA 380; MCLA 16.350 et seq; MSA 3.29(250) et seq; and has been designated by the Governor in Executive Order 1973-2 as "the state entity responsible for the development and coordination of all environmental functions and programs of the State of Michigan."

6. Plaintiff Water Resources Commission is a board of state-wide jurisdiction, created pursuant to 1929 PA 245; MCLA 323.1 et seq; MSA 3.521 et seq. Under this act, the Commission is directed to "protect and conserve the water resources of the state."\*

7. Plaintiff Howard A. Tanner is the Director of the Michigan Department of Natural Resources.

8. Defendant Chemical Recovery Systems, Inc. is a Michigan Corporation.

9. Defendant M.S.&N. Corporation is a Michigan Corporation.

10. Defendant Nolwood Chemical Corporation is a Michigan Corporation.

11. Defendant Edward W. Lawrence is a resident of the State of Michigan, residing at 300 West Thirteen Mile Road, Madison Heights, Michigan.

12. Defendant A.H. Magnus, Jr. is a resident of the State of Michigan, residing at 879 Foxhall Road, Bloomfield Hills, Michigan.

13. Defendant Arthur B. McWood, Jr. is a resident of the State of Michigan, residing at 5728 Hobnail Circle, West Bloomfield, Michigan.

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\* Certain authority, powers, duties, functions and responsibilities of the Water Resources Commission have been transferred to the Department of Natural Resources. See Executive Orders 1973-2 and 1976-8.

14. Defendant Charles H. Nolton is a resident of the State of Michigan, residing at 25069 Woodvale Drive North, Southfield, Michigan.

15. Defendant Peter J. Shagena is a resident of the State of Michigan, residing at 4407 Derry, Bloomfield Hills, Michigan.

16. According to Articles of Incorporation filed with the Michigan Department of Commerce, the following Defendant individuals incorporated, and served as initial officers of, the following Defendant corporations:

<u>Nolwood Chemical Corporation</u>	
Incorporators (3)	Charles H. Nolton Arthur B. McWood, Jr. Edward W. Lawrence
Directors (3)	Charles H. Nolton Arthur B. McWood, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence
Date of Incorporation	May 3, 1958

Incorporated to: "buy, sell, manufacture and otherwise deal in chemicals and allied products; to purchase, encumber, and sell real estate...."

<u>M.S.&amp;N. Corporation</u>	
Incorporators (3)	Edward W. Lawrence Arthur B. McWood, Jr. Peter J. Shagena
Directors (3)	Edward W. Lawrence Arthur B. McWood, Jr. Peter J. Shagena
Resident Agent	Edward W. Lawrence
Date of Incorporation	February 15, 1965

Incorporated to: "buy, sell and deal in real estate...to lease, operate and maintain real estate and personal property... to act as a broker for others in the sale or purchase of real estate...[and] to buy, sell and own real estate...."

Chemical Recovery Systems, Inc.

Incorporators (1) Edward W. Lawrence

Directors (3) Edward W. Lawrence

Peter J. Shagena

Arthur B. McWood, Jr.

Resident Agent Edward W. Lawrence

Date of Incorporation December 1, 1971

Incorporated to: "engage in the processing of chemical waste including, but not limited to, the recovery and destruction thereof."

17. According to Articles of Incorporation and Annual Reports filed with the Michigan Department of Commerce from 1958 through 1979, the following Defendant individuals have held the following positions at various times with the following Defendant corporations:

<u>Individuals</u>	<u>Nolwood Chemical</u>	<u>M.S.&amp;N.</u>	<u>Chemical Recovery</u>
Edward W. Lawrence	Secretary Treasurer Director Incorporator Resident Agent	Secretary Treasurer Director Incorporator Resident Agent	Secretary Treasurer Director Incorporator Resident Agent
A.H. Magnus, Jr.	Director See Paragraph 18, below	Director See Paragraph 18, below	See Paragraph 18, below
Arthur B. McWood, Jr.	Chairman of the Board Vice-President Secretary Treasurer Director Incorporator	President  Secretary Treasurer Director Incorporator	Vice-President  Secretary Treasurer Director
Charles H. Nolton	President Director Incorporator	See Paragraph 19, below	Vice-President Director
Peter J. Shagena	See Paragraph 20, below	Vice-President Director Incorporator	President Director



18. According to Annual Reports filed with the Michigan Department of Commerce from 1971 through 1977, the certified public accounting firm of Jenkins, Eshman and Magnus, in which Defendant A.H. Magnus, Jr. is a partner, served as the accountants for Defendants Nolwood Chemical Corporation, M.S.&N. Corporation, and Chemical Recovery Systems, Inc. from 1971 through 1977. According to Annual Reports filed with the Michigan Department of Commerce from 1975 through 1979, Defendant Magnus served on the Board of Directors of Defendant M.S.&N. Corporation from 1975 through 1978, and on the Board of Directors of Defendant Nolwood Chemical Corporation from 1975 through 1979. The 1978 and 1979 Michigan Annual Report - Profit Corporations forms do not require disclosure of accounting firms; Plaintiffs allege, however, on information and belief, that the certified public accounting firm of Jenkins, Eshman and Magnus continues to serve as the accountants for Defendants Nolwood Chemical Corporation, M.S.&N. Corporation, and Chemical Recovery Systems, Inc.

19. On information and belief, Plaintiffs allege that the "N" in Defendant M.S.&N. Corporation stands for "Nolton," and that Defendant Charles H. Nolton is affiliated with Defendant M.S.&N. Corporation in a manner not reflected on Defendant M.S.&N. Corporation's Articles of Incorporation or Annual Reports. Defendant Nolton was President of Defendant Nolwood Chemical Corporation at the time Nolwood quitclaimed the property located at 36345 Van Born Rd., Romulus, Michigan, to Defendant M.S.&N. Corporation for the sum of one dollar. At the time of that quitclaim, the business address of both Defendant Nolwood Chemical Corporation and Defendant M.S.&N. Corporation was 8970 Hubbell Ave.,

Detroit, Michigan, although Defendant M.S.&N. Corporation chose to list the address of its Resident Agent, Defendant Edward W. Lawrence, 28780 John R St., Madison Heights, Michigan, as its business address on the quitclaim deed. Incidentally, the Resident Agent for Defendant Nolwood Chemical Corporation at the time of the quitclaim was Defendant Edward W. Lawrence, 28780 John R St., Madison Heights, Michigan.

20. Defendant Peter J. Shagena was an employee and representative of Defendant Nolwood Chemical Corporation at the time of the purchase of the property located at 36345 Van Born Rd., Romulus, Michigan, from Cam-Chem Company by Defendant Nolwood Chemical Corporation. On information and belief, Plaintiffs allege that, in addition to serving as President of Defendant Chemical Recovery Systems, Inc., a subsidiary of Defendant Nolwood Chemical Corporation, Defendant Shagena is affiliated with Defendant Nolwood Chemical Corporation in a manner not reflected on Defendant Nolwood Chemical Corporation's Articles of Incorporation or Annual Reports. Defendant Shagena was Vice-President of Defendant M.S.&N. Corporation at the time of the Nolwood quitclaim of the property located at 36345 Van Born Rd., Romulus, Michigan, to Defendant M.S.&N. Corporation. That property is the location of Defendant Chemical Recovery Systems, Inc.'s operations.

21. According to the 1971 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1971:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Directors (3)	Charles H. Nolton Arthur B. McWood, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr. Peter J. Shagena Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

Incorporators (1)	Edward W. Lawrence
Directors (3)	Edward W. Lawrence Peter J. Shagena Arthur B. McWood, Jr.
Resident Agent	Edward W. Lawrence
Date of Incorporation	December 1, 1971

22. According to the 1972 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1972:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Treasurer	Edward W. Lawrence
Directors (3)	Charles H. Nolton Arthur B. McWood, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr. Peter J. Shagena Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

President	Peter J. Shagena
Vice-President	Charles H. Nolton
Secretary	Arthur B. McWood, Jr.
Treasurer	Edward W. Lawrence
Directors (4)	Edward W. Lawrence
	Peter J. Shagena
	Arthur B. McWood, Jr.
	Charles H. Nolton
Resident Agent	Edward W. Lawrence

23. According to the 1973 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1973:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Treasurer	Edward W. Lawrence
Directors (3)	Charles H. Nolton
	Arthur B. McWood, Jr.
	Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr.
	Peter J. Shagena
	Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

President	Peter J. Shagena
Vice-President (2)	Charles H. Nolton
	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Treasurer	Edward W. Lawrence
Directors (3)	Peter J. Shagena
	Arthur B. McWood, Jr.
	Charles H. Nolton
Resident Agent	Edward W. Lawrence

24. According to the 1974 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1974:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Directors (3)	Charles H. Nolton Arthur B. McWood, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr. Peter J. Shagena Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

President	Peter J. Shagena
Vice-President (2)	Charles H. Nolton Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Treasurer	Edward W. Lawrence
Directors (3)	Peter J. Shagena Arthur B. McWood, Jr. Charles H. Nolton
Resident Agent	Edward W. Lawrence

25. According to the 1975 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1975:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Directors (3)	A.H. Magnus, Jr. Arthur B. McWood, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr. A.H. Magnus, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

No record of completed 1975 Chemical Recovery Systems, Inc.  
Annual Report on file with Michigan Department of Commerce.

26. According to the 1976 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1976:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Directors (3)	A.H. Magnus, Jr. Arthur B. McWood, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr. A.H. Magnus, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

President	Peter J. Shagena
Vice-President (2)	Charles H. Nolton Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Treasurer	Edward W. Lawrence
Directors (3)	Peter J. Shagena Arthur B. McWood, Jr. Charles H. Nolton
Resident Agent	Edward W. Lawrence

27. According to the 1977 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1977:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Directors (3)	A.H. Magnus, Jr.
	Arthur B. McWood, Jr.
	Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr.
	A.H. Magnus, Jr.
	Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

1977 Annual Report filed incomplete - returned to Chemical Recovery Systems, Inc. for completion - completed report never filed with Michigan Department of Commerce.

28. According to the 1978 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1978:

Nolwood Chemical Corporation

President	Charles H. Nolton
Vice-President	Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Directors (3)	A.H. Magnus, Jr.
	Arthur B. McWood, Jr.
	Edward W. Lawrence
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Vice-President	Peter J. Shagena
Secretary	Edward W. Lawrence
Directors (3)	Arthur B. McWood, Jr. A.H. Magnus, Jr. Edward W. Lawrence
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

President	Peter J. Shagena
Vice-President (2)	Charles H. Nolton Arthur B. McWood, Jr.
Secretary	Edward W. Lawrence
Treasurer	Edward W. Lawrence
Directors (3)	Peter J. Shagena Arthur B. McWood, Jr. Charles H. Nolton
Resident Agent	Edward W. Lawrence

29. According to the 1979 Annual Reports filed with the Michigan Department of Commerce, the following Defendant individuals held the following positions with the following Defendant Corporations in 1979:

Nolwood Chemical Corporation

President	Charles H. Nolton
Chairman of the Board	Arthur B. McWood, Jr.
Secretary	Arthur B. McWood, Jr.
Treasurer	Arthur B. McWood, Jr.
Directors (2)	Arthur B. McWood, Jr. A.H. Magnus, Jr.
Resident Agent	Edward W. Lawrence

M.S.&N. Corporation

President	Arthur B. McWood, Jr.
Secretary	Arthur B. McWood, Jr.
Treasurer	Arthur B. McWood, Jr.
Director	Arthur B. McWood, Jr.
Resident Agent	Edward W. Lawrence

Chemical Recovery Systems, Inc.

President	Peter J. Shagena
Secretary	Arthur B. McWood, Jr.
Treasurer	Arthur B. McWood, Jr.
Directors (2)	Arthur B. McWood, Jr. Peter J. Shagena
Resident Agent	Edward W. Lawrence



30. The 1974, 1975, and 1979 Annual Reports filed with the Michigan Department of Commerce by Defendant Nolwood Chemical Corporation list Defendant Chemical Recovery Systems, Inc. as a subsidiary corporation. The 1976, 1977, and 1978 Annual Reports filed with the Michigan Department of Commerce by Defendant Nolwood Chemical Corporation list Defendant Chemical Recovery Systems, Inc. and Chemical Recovery Systems, Inc. of Ohio as subsidiary corporations. The 1974, 1976, and 1978 Annual Reports filed with the Michigan Department of Commerce by Defendant Chemical Recovery Systems, Inc. list Defendant Nolwood Chemical Corporation as Defendant Chemical Recovery Systems, Inc.'s parent corporation. The 1979 Annual Report filed with the Michigan Department of Commerce by Defendant Chemical Recovery Systems, Inc. lists Chemical Recovery Systems, Inc. of Ohio as a subsidiary corporation and, in the space provided for name of parent corporation, states, "N/A" (not applicable).

#### IV. FACTS

##### A. Defendants' Operations and Contamination of the Environment

31. Defendants, jointly and severally, and in the name of Chemical Recovery Systems, Inc., incorporated to "engage in the processing of chemical waste including, but not limited to, the recovery and destruction thereof," store and process liquid industrial wastes on their property located at 36345 Van Born Road, Romulus, Michigan.

32. In a February 2, 1978, letter to the Department of Natural Resources (hereinafter, DNR), Defendants identified "those spent solvent streams we transport to our Romulus, Michigan facility for the purpose of extracting the solvent," noted those "specific chemicals and/or chemical compounds that...[may be present] as a waste by-product from our solvent recovery process," and supplied a specific gas chromatography analysis of eighteen spent solvent streams. Among the over thirty different solvents, four different types of oils, and seven different categories of solids so identified were the following chemicals: Methyl Ethyl Ketone; Methyl Isobutyl Ketone; Methylene Chloride (Dichloromethane); Perchloroethylene; Phenol; Toluene; 1, 1, 1 Trichloroethane; Trichloroethylene; and, Xylene.

33. Between June 22, 1977, and March 13, 1979, a series of water and sediment samples were collected on Defendants' property, and from the Trouton Drain above, opposite, and below Defendants' property.

34. Eight specific chemical substances have been identified in samples obtained from Trouton Drain opposite and below Defendants' property. These substances included Dichloroethane, Dichloromethane, Trichloroethane, Trichloroethylene, Benzene, Toluene, Xylene, and Phenol.

35. Groundwater samples collected on or near Defendants' property were contaminated with Trichloroethylene, Toluene, Xylene, and Phenol.

36. Five chemical contaminants including Dichloroethane, Dichloromethane, Trichloroethane, Trichloroethylene, and Toluene were found to be present in water samples obtained

from the sand-lined seepage lagoon known as the "east pond" located on Defendants' property.

37. Sediment samples obtained from the sand-lined seepage lagoon known as "vinyl pond" located on Defendants' property contained evidence of Perchloroethylene and Vinyl Chloride contamination.

38. Samples taken from the spillage to the ground after the overflow of an aboveground waste solvent storage tank on Defendants' property revealed the presence of Benzene, Toluene, Xylene, Methyl Ethyl Ketone, and Methyl Isobutyl Ketone.

39. Samples taken from a diked bulk storage area on Defendants' property at the time a submersible pump was pumping out polluted water from the diked bulk storage area onto the ground revealed the presence of Benzene, Toluene, and Xylene.

40. Dichloroethane, Dichloromethane, Perchloroethylene, Trichloroethane, Trichloroethylene, and Vinyl Chloride belong to a group of chemicals commonly referred to as aliphatic chlorinated hydrocarbons. These chemicals are typically volatile, colorless liquids. Chemically, they consist of saturated or unsaturated carbon chains in which one hydrogen atom or more have been replaced by one or more chlorine atoms. Aliphatic chlorinated hydrocarbons have found wide use as solvents in degreasing, dewaxing, dry cleaning and extracting processes. Additionally, they are used as chemical intermediates for drugs, plastics and synthetic rubber. The toxicological effects of this

group of chemicals vary from one compound to another, but, generally, most cause central nervous system depression. Many of these chemicals have been tested and shown to cause cancer in laboratory test animals. One member of this group, Vinyl Chloride, is considered a human carcinogen.

41. 1, 2 Dichloroethane is a volatile, colorless liquid with a chloroform-like (sweet) odor. Chronic exposure to 1, 2 Dichloroethane has been associated with liver and kidney damage. A recent National Cancer Institute Study found 1, 2 Dichloroethane to be carcinogenic in laboratory rats and mice, causing squamous-cell carcinomas of the forestomach, hemangiosarcomas, subcutaneous fibromas, mammary adenocarcinomas, endometrial tumors, and alveolar/bronchiolar adenomas.

42. The 1, 1 Dichloroethane isomer of Dichloroethane is a volatile, colorless liquid with a characteristically chloroform-like (sweet) odor. A National Cancer Institute Study of laboratory rats and mice found dose-related increases in mammary adenocarcinomas and in hemangiosarcomas and in the incidence of endometrial stromal polyps as compared to controls. NCI described these findings as, "indicative of the possible carcinogenic potential of the test compound."

43. Dichloromethane, also known as Methylene Chloride, is a volatile, colorless liquid which has an ether-like (sweet) odor. When heated to decomposition, Dichloromethane emits irritating, toxic fumes, including the highly toxic fumes of phosgene (a nerve gas); its degradation products include carbon monoxide. Chronic inhalation exposures of Dichloromethane to rats, mice, and dogs has caused liver and kidney damage in these animals. In humans, inhalation

of Dichloromethane has been reported to cause various effects including central nervous system depression, increased carbon monoxide levels in the blood, nausea, headaches, pulmonary edema, and generalized impairment of psychomotor performance. The National Cancer Institute is now in the process of bioassay testing of Dichloromethane as a possible human carcinogen.

44. Perchloroethylene, also known as Tetrachloroethylene, is a volatile, colorless liquid with an ethereal (sweet) odor. Chronic exposure to Perchloroethylene has been associated with liver and kidney damage, and it also affects the central nervous system. A recent long-term animal study reported by the National Cancer Institute indicates that Perchloroethylene causes liver cancer in laboratory mice. The NCI Study showed that the administration of Perchloroethylene was associated with a significantly increased incidence of hepatocellular carcinoma, and showed a highly significant positive association between increased dosage and elevated tumor incidence.

45. 1, 1, 1 Trichloroethane, also known as Methyl Chloroform, is a volatile, colorless liquid with a sweetish odor. 1, 1, 1 Trichloroethane acts as a narcotic and depresses the central nervous system. The National Cancer Institute is now in the process of bioassay testing of 1, 1, 1 Trichloroethane as a possible human carcinogen.

46. Trichloroethylene is a volatile, colorless liquid with a chloroform-like (sweet) odor. A National Cancer Institute Study found this chemical to be carcinogenic in laboratory mice and has labeled Trichloroethylene a "suspect human liver carcinogen." Toxic effects of Trichloroethylene

in humans result from ingestion, inhalation, and skin absorption of the compound. Acute exposure to large concentrations of Trichloroethylene can produce many symptoms including liver damage, kidney damage, pulmonary edema, nausea, vomiting, headaches, blurred vision, and coma. Ingestion of the compound has caused inebriation, vomiting, diarrhea, and coma. Trichloroethylene in vapor or liquid form can cause watering and blurring of the eyes and serious eye damage. Respiration or prolonged exposure by inhalation to Trichloroethylene has produced the symptoms described above and also paralysis of the nerves of the face and other extremities.

47. Vinyl Chloride is a gas at normal atmospheric temperature and pressure; it has an ethereal (sweet) odor. It is sparingly soluble in water but has the ability to combine with certain metallic salts which increases the solubility. A National Cancer Institute Study has shown Vinyl Chloride to be an occupational carcinogen, causing liver cancer in workers in the Vinyl Chloride industry. In addition to its carcinogenic effects, chronic exposure of Vinyl Chloride can cause numerous irreversible effects including central nervous system, renal, and cardiac impairment.

48. In addition to the aliphatic chlorinated hydrocarbons, other organic substances (Benzene, Toluene, Xylene, Phenol, Methyl Ethyl Ketone, and Methyl Isobutyl Ketone) were also found in some of the samples.

49. Benzene is a volatile, colorless liquid with an aromatic odor. It is considered to be a suspect human carcinogen. Epidemiological surveys have correlated leukemia with Benzene exposure. It is mutagenic to human lymphocytes. Benzene in the environment has been demonstrated to exert deleterious effects at virtually every level of the food chain.

50. Toluene is a volatile, colorless liquid with a sour, burnt odor. Toluene is primarily a central nervous system depressant in both humans and other animals. Toluene has been shown to cause teratogenic effects in mice. The National Cancer Institute has tentatively selected Toluene for testing as a possible human carcinogen.

51. Xylene is a volatile, colorless liquid with a sweet odor. Acute exposure to Xylene vapor may cause central nervous system depression and adverse effects upon the liver and kidneys. The National Cancer Institute is scheduled to commence the bioassay testing of Xylene as a possible human carcinogen in April, 1980.

52. Phenol is a white crystalline solid which is soluble in water and which has a medicinal, sweet, and acrid odor. Phenol is poisonous, caustic, combustible, and emits toxic fumes when heated. In acute human Phenol poisoning, the main effect is on the central nervous system. Absorption of Phenol through the skin can result in death, damage to the kidneys, liver, spleen, pancreas, and edema of the lungs. After spilling Phenol on the skin, the following symptoms may develop rapidly: headaches, dizziness,

muscular weakness, dimness of vision, ringing in the ears, irregular and rapid breathing, and weak pulse, and these symptoms may be followed by loss of consciousness, collapse, and death. When taken internally, nausea, vomiting, severe abdominal pain, and corrosion of tissues in the nasal pharyngeal region and stomach occur. There is usually no immediate complaint of pain when Phenol contacts the skin; however, an intense burning is later felt, followed by local anesthesia and later by gangrene. Chronic poisoning, following prolonged exposures to low concentration of the vapor or mist results in digestive disturbances, nervous disorders, and skin eruptions. Dermatitis is common to those coming in contact with Phenol or Phenol containing products. Death may result if there has been extensive damage to the kidneys and liver. The National Cancer Institute is now in the process of drafting its final report on the bioassay testing of Phenol as a possible human carcinogen.

53. Methyl Ethyl Ketone is a volatile, colorless liquid with a distinctive acetone-like odor. When exposed to heat or flame, Methyl Ethyl Ketone presents highly dangerous fire and disaster hazards and is a moderate explosion hazard when in the vapor form. Methyl Ethyl Ketone causes central nervous system depression in experimental animals. Inhalation exposure to rats has resulted in embryo toxicity, fetal toxicity, and potential teratogenicity. Humans acutely exposed to the vapors of Methyl Ethyl Ketone have experienced irritations of the mucous membranes and conjunctiva. In addition, it is also a narcotic by inhalation.



54. Methyl Isobutyl Ketone is a clear, stable liquid with a faint camphor odor. When exposed to heat or flame, Methyl Isobutyl Ketone presents a dangerous fire hazard, and is a moderate explosion hazard in its vapor form. Methyl Isobutyl Ketone is highly toxic to humans. Humans acutely exposed to Methyl Isobutyl Ketone have experienced irritation of the eyes, conjunctiva, and mucous membranes of the nose and throat. Gastroenteritis is expected to be the dominant disorder after injection, and central nervous system depression might also occur. Repeated local exposure may produce a dry, scaly, fissured dermatitis. Systemic intoxication causes the following systems: headaches, nausea, vomiting, dizziness, loss of coordination, and unconsciousness.

55. The chemical oxygen demand (C.O.D.) test is widely used as a means of measuring the pollutorial strength of domestic and industrial wastes. It measures the total quantity of oxygen required for oxidation of all organic compounds in a waste to carbon dioxide and water. When wastes containing C.O.D. are discharged, that portion of the C.O.D. which is oxidizable by biological organisms reduces the dissolved oxygen present in the receiving stream. High levels of C.O.D. will remove the dissolved oxygen completely resulting in a septic or putrid condition and the corresponding production of strong noxious odors.

56. The following chart compares C.O.D. values in mg/l at Defendants' property in Romulus to normal background levels and to raw sewage.

	<u>C.O.D. mg/l</u>
Background levels in streams*	3-45
Trouton Drain upstream of Chemical Recovery	61-72
Trouton Drain adjacent to Chemical Recovery	3400-6000
Trouton Drain downstream of Chemical Recovery (Joan Road)	890-950
Background - groundwater level**	2-45
Groundwater - Chemical Recovery Systems' property	150-40,000
Domestic sewage***	550-700

\*Comprehensive Studies, Department of Natural Resources,  
Monitoring Program.

\*\*Geological Survey Division, Studies of Macomb County  
and Muskegon County.

\*\*\*EPA Process Design Manual for Wastewater Treatment  
Facilities for Small Sewered Communities;  
EPA 625-1-77-009, October 1977.

#### B. Chronology of Events, 1967 to the Present

57. On June 26, 1967 Marathon Finance Company, a Delaware Corporation, conveyed the property located at 36345 Van Born Road, Romulus Township, Wayne County, Michigan, by warranty deed to Cam Chem Company, a Michigan Corporation.

58. On October 23, 1968, the Water Resources Commission (hereinafter, WRC) issued Order of Determination No. 1212, directed to "Cam Chem Company, its agents or successors." The Order noted that:

"Cam Chem Company, a Michigan Corporation, has filed with the Water Resources Commission a written statement dated September 3, 1968 for a prospective new use of the waters of the state for disposal of wastes from an existing chemical refining plant located at 36345 VanBorn Road, Wayne, Michigan; and....

61. At the time the foregoing letter was written by DNR, and was received by Cam Chem Company, Mr. Joseph A. Heimbuch, Jr. was Director of Sales and Technical Service for Cam Chem Company, and Mr. Walter A. Lucken, Jr. was Director of Engineering for Cam Chem Company.

62. In an April 26, 1971, letter to DNR, Mr. Walter A. Lucken, Jr., as Director of Engineering for Cam Chem Company, advised and assured that: "we have completed the excavation of 2 of 4 holding ponds, each of 300,000 gallon capacity. We anticipate delivery of blue clay with which to line the ponds, momentarily." As Plaintiffs will set forth below, these allegedly clay-lined "holding ponds" were, in fact, sand-lined seepage lagoons.

63. In an October 20, 1971, WRC Memorandum, Wayne Denniston, District 1 Basin Engineer reported that:

"Mr. Pete Shagena of Nolwood Chemical Company called today and reported that they will probably take over Cam-Chem in the very near future.

He called regarding my letter on the disposal of the drums that are located on the property...[W]e came to an understanding and the conditions in my letter to Walt Lucken will be met."

64. On November 23, 1971, Cam Chem Company conveyed the foregoing property by warranty deed to Defendant Nolwood Chemical Corporation, for the sum of \$57,000.00.

65. Defendant Chemical Recovery Systems, Inc. was incorporated on December 1, 1971, and commenced operations on or about that date at the former location of Cam Chem Company, 36345 Van Born Road, Wayne (Now Romulus), Michigan.

66. On May 8, 1972, Defendant Nolwood Chemical Corporation conveyed the foregoing property by quitclaim deed, for the sum of one dollar, to Defendant M.S.&N. Corporation.

67. As noted, the street address of the property referred to in Paragraphs 31-64 of this Complaint is 36345 Van Born Road, Romulus (formerly Wayne), Michigan. The business address of Defendant Nolwood Chemical Corporation at the time of its purchase of the foregoing property, at the time it quitclaimed the foregoing property to Defendant M.S.&N. Corporation, and at the present time is 8970 Hubbell Avenue, Detroit, Michigan. The business address of Defendant M.S.&N. Corporation at the time of the quitclaim and at the present time is 8970 Hubbell Avenue, Detroit, Michigan. The quitclaim deed lists 28780 John R. Street, Madison Heights, Michigan as the address of Defendant M.S.&N. Corporation. That address is, in fact, the address of its Resident Agent, Defendant Edward W. Lawrence, who was Resident Agent for both Defendant Nolwood Chemical Corporation and Defendant M.S.&N. Corporation, and who continues to serve as Resident Agent for Defendants Nolwood Chemical Corporation and M.S.&N. Corporation, as well as Defendant Chemical Recovery Systems, Inc., at the present time. A May 30, 1972, mortgage lists 8970 Hubbell Avenue, Detroit, Michigan, as the address of Defendant M.S.&N. Corporation and a February 15, 1974, mortgage lists 36345 Van Born Road, Romulus, Michigan as the address of Defendant M.S.&N. Corporation. The business address of Defendant Chemical Recovery Systems, Inc. from the date of its incorporation to the present time, and the location of its operations during that same time, has been 36345 Van Born Road, Romulus, Michigan although Defendant Chemical Recovery Systems, Inc. has never owned said property.

68. Cam Chem Company obtained the property located at 36345 Van Born Road, Romulus, Michigan, on June 26, 1967. WRC Order No. 1212, directed to "Cam Chem Company, its agents or successors," was issued on October 23, 1968. From the time it obtained the Romulus property, until the time it conveyed that property to Defendant Nolwood Chemical Corporation, Cam Chem Company -- a single Michigan corporation -- both owned the Romulus property and ran the operations conducted on that property.

69. In contrast to Cam Chem Company's method of doing business, Defendants first obtained the Romulus property on November 23, 1971, through Defendant Nolwood Chemical Corporation. Shortly thereafter, on December 1, 1971, Defendants formed Defendant Chemical Recovery Systems, Inc., with Defendant Shagena as its President. The incorporator and first directors of Defendant Chemical Recovery Systems, Inc. were Defendants Lawrence, McWood, and Shagena. The officers and directors of Defendant Nolwood Chemical Corporation at the same time were Defendants Lawrence, McWood and Nolton. Defendant Chemical Recovery Systems, Inc., commenced operations on the Romulus property shortly after its incorporation. It, however, unlike Cam Chem Company, never owned the property that was the location of its operations. Rather, shortly after the commencement of Defendant Chemical Recovery Systems, Inc.'s operations, Defendant Nolwood Chemical Corporation, on May 8, 1972, quitclaimed the Romulus property to Defendant M.S.&N. Corporation, for the sum of one dollar.

The officers and directors of Defendant Nolwood Chemical Corporation at the time of the quitclaim were Defendants Lawrence, McWood, and Nolton; the officers and directors of Defendant M.S.&N. Corporation were Defendants Lawrence, McWood, and Shagena; and the officers and directors of Defendant Chemical Recovery Systems, Inc. were Defendants Lawrence, McWood, Nolton, and Shagena. The accounting firm in which Defendant Magnus is a partner was the accounting firm for all three Defendant corporations.

70. Since on or about December 1, 1971, the date of the incorporation of Defendant Chemical Recovery Systems, Inc., the individual Defendants, acting as officers, agents, or controlling owners of Defendant corporations Nolwood Chemical Corporation, M.S.&N. Corporation, and Chemical Recovery Systems, Inc., actively directed, managed and controlled said Defendant corporations, including the commission of the negligent and willful torts and violations of statutes, rules, orders and permits, as hereinafter alleged; and, as such, the individual Defendants are jointly and severally liable for the actions taken, the legal wrongs committed, and the damages which have resulted, as set forth in Counts I through VII of this Complaint.

71. Mr. Joseph A. Heimbuch, Jr., Director of Sales and Technical Services for Cam Chem Company at the time of the purchase of its operations by Defendants, now serves in a similar position with Defendant Chemical Recovery Systems, Inc. Mr. Walter A. Lucken, Jr., Director of Engineering for Cam Chem Company at the time of the purchase of its operations by Defendants, has served and, Plaintiffs allege, on information and belief, now serves as an attorney for Defendant Chemical Recovery Systems, Inc.

72. In a March 27, 1973, letter, DNR advised Defendant Shagena that:

"It is our belief that you acquired complete liability for...[Cam Chem Company] and/or any previous company's operation on the property. Chemical Recovery, Inc., is bound to meeting the requirements of the Order of Determination issued to Cam-Chem by Water Resources Commission on October 23, 1968.

In accordance with our discussion at your office on March 21, 1973, I am outlining the requirements you agreed to as a reasonable and realistic effort to remove existing or potential problems. We discussed five areas of problems which are addressed individually below, with the deadlines and actions we associated with each.

Area 1: Drains - The drain along the west boundary of the Chemical Recovery, Inc., property contains an orange-colored water with a moderate quantity of oil on the surface. The source of coloration and oil is a pond of water located on the Chemical Recovery, Inc., property. The drain in front of the yard running along the east side of the parking lot has a substantial quantity of oil on it. The source of this oil is the drum storage area in the yard.

The Trouton Drain adjacent to the east boundary of Chemical Recovery, Inc., property contains an orange oily floating substance. The source of this substance is the drum storage area in the yard. We view these situations as

emergencies and must be rectified immediately. These drains must be cleaned up prior to March 31, 1973.

Area 2: Lagoons - Chemical Recovery, Inc., has four (4) lagoons on their property which we agreed must be cleaned up and removed prior to June 30, 1973. This involves removing all liquids from the lagoons, cleaning all contaminated soil out of the lagoons and removing it to an approved landfill, and finally, backfilling and eliminating the lagoons completely.

Area 3: Vinyl Pond - Chemical Recovery, Inc., has on the property a lagoon referred to as the Vinyl Pond, which contains unknown substances at the present time. The ultimate goal is to completely eliminate this pond. You agreed to furnish me with a written proposal detailing what is in the pond and your method of removal prior to May 1, 1973.

Area 4: Drums - Your estimate on March 21, 1973, of the number of drums on the property was between 30,000 to 100,000. Our ultimate goal is to eliminate this inventory of drums which at the present time are only being stored. You agreed to a program of reduction of 3,000 drums per month until the inventory is eliminated. We also agreed to furnish me with a written proposal prior to May 1, 1973, outlining (1) a reasonable number of drums which are rotated through your yard on a weekly basis (2) a number of drums which will be retained on the property longer than five (5) working days (3) a plan for providing a diked area for the drums retained longer than five (5) days to contain a volume of 150% of the combined volume of drums within the dike.

Area 5: Water Resources Commission general rules which became effective March 21, 1973, requires tanks to be diked.

I am enclosing a copy of these rules and refer you to Rule 158 (1) on page 4. You agreed to furnish me with a detailed written proposal prior to May 1, 1973, for the diking of your tanks.

Failure to comply with the outlined goals and performance dates will result in referral to the Water Resources Commission for appropriate action."



73. Between March 15, 1973, and May 14, 1974, at least twenty complaints were received by WRC, DNR, the United States Environmental Protection Agency (hereinafter, EPA) the Wayne County Drain Commission, and the Wayne County Health Department concerning Defendants' operations at 36345 Van Born Road, Romulus, Michigan. The complaints included oil spills from Defendants' property into Trouton Drain, discolorations of Trouton Drain beginning at Defendants' property and referred to as "grayish white," "milky," "milky gray," and "bluish gray," and odors emanating from Trouton Drain opposite and below Defendants' property and described as "foul," "bad," "terrible," and "unbearable."

74. On March 15, 1973, the Dearborn Heights Department of Public Works traced oil in the Trouton Drain all the way back to Defendants' property, where oil was flowing across the ground and directly into the Drain. Defendant Shagena was contacted but was not cooperative, stating that oil had been in the lagoons since the property was owned by Cam Chem Company. The sides of the lagoons appeared to be constructed of sand, and had broken down. The sand construction of the lagoons indicated that, in addition to direct flow into the Drain, it was likely that contaminants were leaching into the groundwater and thence into the Drain. Defendant Shagena claimed he had complained to Romulus Township about the lagoons. At the time he was contacted, Defendant Shagena was standing by and watching as a pump was dewatering one lagoon, creating sufficient flow for the oil to move across the ground and directly into the Drain.

75. During the week of April 16, 1973, four complaints concerning the water quality of Trouton Drain were received by WRC. The complaints concerned both the foul odor and discoloration of the Drain, and indicated that the problem had become acute approximately one month prior to April, 1973. According to an April 23, 1973 WRC Facilities Inspection Report:

"Trouton Drain was inspected at the two...[complainants'] Romulus addresses on the afternoon of April 23, 1973. At both location[s] the drain was found to possess a foul odor and was very cloudy in appearance with a dark gray discoloration. This same drain condition was found upstream at Wayne Road. Since the head of the Trouton Drain is located at Van Born Road where Chemical Recovery Systems is located, the writer proceeded directly to this company stopping to inspect the drain at Van Born Road. Water flowing into the drain from across Van Born Road was observed to be clear and the flow into Trouton Drain from the west storm sewer which parallels Van Born Road on the south side was found to be slightly turbid with a reddish discoloration. The drain below this point was observed to be very dark in color."

76. An on-site inspection of Defendants' property on that day revealed the following:

"(1) Trouton Drain next to the company's property was observed to be very turbid and very dark in color. Pools of oil on surface of the stream were discovered near their no. 4 liquid waste pond.

(2) Two breaks were found in the yard dike. Surface water from the low area of their property was flowing into Trouton Drain. Flow from the large pond created by the above mentioned low area was very turbid and reddish in color. It contained some visible oil and possessed an odor very similar to the odor detected in Trouton Drain at the Henry Ruff Road and Ecorse Road locations.... Flow from one break in the dike was estimated at 30 gpm and flow from the other break was estimated at 20 gpm....

(3) Discovered water flowing through the old vinyl pond into the low area mentioned in item 2 at an estimated rate of 50 gpm. Further investigation revealed the company was pumping water from a pit located next to the process building. Some storage tanks are located in this pit. The water being discharged from the pump was running in two major directions. One flow was through a cut in the vinyl pond and the other flow was to a low area on the west side of the property. Water collected in the latter low area, also, drains to the large surface pond from which water was found flowing into the Trouton Drain. Samples of the water collected in this low area (west side of the property was sampled, also,) for laboratory evaluation. In addition to checking the company's property, Trouton Drain was inspected to Jones [sic] Road which is the first street south of the plant. Water in this section of the drain was almost black in color and very turbid. It, also, possessed a sharp chemical odor which was very similar to the odor detected in the water found draining from the Company property....

\* \* \*

The tests indicated that the quality of water flowing from the Company into Trouton Drain. The water sample collected from the drain at Jones Road had 63 mg/l hexane extractables, 0.61 mg/l phenol and 1280 mg/l C.O.D. Water draining from the Company's property into the Trouton Drain analyzed to contain 153 mg/l hexane extractables, 0.28 mg/l phenol and 7380 mg/l C.O.D. Both samples possessed the same characteristic sharp foul odor detectable near the Company's Chemical Recovery plant."

77. On May 8, 1973, two complaints concerning the water quality of Trouton Drain were received by WRC. Both complaints reported that Trouton Drain began clearing up shortly after the April 23, 1973, Facilities Inspection. However, by May 5, 1973, the Drain had returned to a milky-grayish white appearance, and possessed a very foul odor.

78. According to a May 10, 1973, WRC Facilities Inspection Report, an on-site inspection of Defendants' property that day revealed the following:

"(1) Trouton Drain at 33955 Ecorse Road was found to be milky white and possessed a sharp foul odor....

(2) Trouton Drain near the intersection of Irma and Beverly Roads was observed to be very turbid and dark in color. Odor detected at this location seemed to be very similar to odor detected emitting from the drain at Ecorse Road....

(3) Trouton Drain at Jones [sic] Road was very turbid and almost black in color. A sharp foul odor was detectable which again appeared to be similar to the odor detected in the two above locations of the drain....

(4) Trouton Drain near Van Horn [sic] Road was found to be very dark and possessed a sharp foul odor. Visible oil was observed on the drain adjacent to the Company's drum storage area. A small flow of oily liquid was discovered flowing from the drum storage area into Trouton Drain. Water flowing into Trouton Drain at Van Born was observed to be clear....

(5) Inspection of Chemical Recovery Systems' property revealed that a large portion of their property south of the four liquid waste lagoons and old vinyl pond was flooded....

[S]amples collected from the Trouton Drain in Romulus...were found to contain high C.O.D., hexane extractables, and phenol contents. The source of the contaminants appeared to be Chemical Recovery Systems, Inc. plant located at 36345 Van Born. The sample collected from Trouton Drain at Jones [sic] Road which is the first street south of the Company analyzed to contain 1880 mg/l C.O.D., 30 mg/l phenol. Samples collected from the same stream adjacent to the Company property was found to possess 1710 mg/l C.O.D. and 128 mg/l hexane extractables...."

79. On June 1, 1973, a complaint concerning the water quality of Trouton Drain was received by WRC. The complainant reported that the Drain continued to give off a foul odor and that recent rains had not cleared the odor or the grayish-white discoloration of the Drain reported earlier, in April, 1973.

80. According to a June 1, 1973, WRC Facilities Inspection Report, an on-site inspection of Defendants' property that day revealed the following:

"(1) Trouton Drain at 33955 Ecorse Road, Romulus, was found at 3:55 pm to have a sharp foul odor. It was very turbid with a grayish white discoloration....

(2) Trouton Drain at Wayne Road was discovered to be very dark and turbid. An odor similar to the odor detected being emitted from the drain on Ecorse Road was detected at this location, also.

Trouton Drain adjacent to Chemical Recovery Systems was jointly inspected with Mr. Peter Shagena. The stream was very dark and turbid with some visible oil noted on the surface of the water. A break was found in the dike in about the same location noted in the inspection made April 23, 1973. Water was flowing from the Company's property into the Trouton Drain at an estimated rate of about 150 gpm. This water, also, possessed a sharp foul odor, reddish color and was very turbid."

81. On March 3, 1974, WRC received a complaint concerning "oily paint" covering a small stream crossing Venoy Road approximately one-quarter mile south of Ecorse Road. An on-site investigation revealed that:

"The stream was heavily covered with a tannish colored oily feeling material with an odor of paint and/or petroleum type substance. The stream was identified as the North Branch of Ecorse Creek.

The stream was traced back to Beverly Road and Trouton Drain where the same material was noted along the banks of the drain. The heaviest accumulation appeared to be at Venoy Road, although there were traces of material along the banks of both the creek and the drain."

82. During this on-site inspection, a WRC representative and Defendant Shagena:

"walked Trouton Drain from its crossing on Joan Street, about 1/4 mile north of Beverly Road, to the ponds at the rear of Chemical Recovery, a distance of about 100 yards. The drain was completely covered with a reddish brown oily material. Under this material there was a layer of brownish material similar to that material in Ecorse Creek."

83. On March 4, 1974, a Dearborn Heights Department of Public Works mobile unit reported a sighting of oil on Ecorse Creek. According to a March 4, 1974 WRC memorandum concerning the incident:

"An inspection of Ecorse Creek revealed a heavy flow of reddish brown oil passing the Monroe Street Bridge.... A substantial accumulation was discovered below Katherine Street....

Chemical Recovery Systems was visited. An extensive slick of oil was found in Trouton Drain alongside the plant and at the Beverly Road Culvert downstream. No oil was found above the plant. Mr. Peter Shagena and other plant officials met with the writer. Mr. Shagena stated that although he would not admit that the oil came from Chemical Recovery, he could not deny it either, and indicated that the Company was taking the responsibility for the cleanup."

84. On April 16, 1974, WRC received a complaint, through EPA of a substantial quantity of oil in Trouton Drain. Representatives of both WRC and EPA conducted an on-site investigation that same day. Approximately 200 gallons of reddish-brown oil were found in the Drain, and according to an April 18, 1974, WRC memorandum concerning the incident:

"Trouton Drain was inspected near 35960 Joan Street, about 1/4 mile north of Beverly. At this location a substantial quantity of reddish brown oil was found. This appeared to be the same oil as was found at Beverly. The drain was then walked to Van Born Road. Pockets of oil were found trapped in vegetation at several locations adjacent to Chemical Recovery's property. In addition the banks on both sides of the drain were severely oil stained. The water under the oil appeared gray and white. This appeared to be soluble oil. Two small streams of water were entering the drain at Van Born. These were apparently normally surface drainage and oil free....

The investigators then entered Chemical Recovery property. There were four rectangular oil ponds on the east side of the property. They all contained some quantities of oil. All appeared to be merely pits dug in the sandy soil in the area, and all were within 50 feet of the drain. The southern most pond... contained a dark black substance which appeared to form a vinyl like layer on the surface. Pond 3 was being pumped out. A gas operated portable pump in the northwest corner of the pond was pumping the pond water to a recovery unit. It was later learned that the oil in this water is reclaimed and the water goes to the sanitary sewer. The pond water appeared to be of a cloudy orange nature. However near the banks a reddish brown oil was present.... Ponds 1 and 2 were interconnected both contained a heavy blackish-red oil. Pond 1 was very close to overflowing. The liquid was flowing from 1 to 2 near the southeast corner of pond 1....

On the west side of the property there is an irregular shaped pond which contained an orange liquid with traces of oil. This pond apparently catches most of the runoff on the west side of the property. The southern edge of the pond showed a noticable amount of seepage to a small surface drain which flows to Trouton Drain.... South of this pond is a low grass covered area which contained numerous large pockets of a reddish-brown oil.... There was noticable evidence (oil stained dirt and weeds) of flow over land to the small ditch and subsequently to Trouton Drain."

85. Faced with the foregoing record of performance by Defendants from the time they succeeded in interest to Cam Chem Company, and thus became subject to the provisions of WRC Order No. 1212, WRC held a Hearing on "Chemical Recovery, Inc., Romulus," on June 27, 1974, in Sault Ste. Marie, Michigan, to formally review Defendants' compliance with the provisions of WRC Order No. 1212.

86. Subsequent to the June 27, 1974, WRC Hearing, WRC, on August 29, 1974, issued WRC Order No. 1739, superseding WRC Order No. 1212, in order to "regulate the storage and processing of liquid industrial wastes and to eliminate existing pollution by Chemical Recovery Systems, Inc. at its site located at 36345 Van Born Road, Romulus, Michigan."

87. WRC Order No. 1739 required that "Chemical Recovery Systems, Inc., its agents or successors...store and process liquid industrial wastes at its above described site and...eliminate existing pollution in accordance with" inter alia, the following Special Conditions:



"1. There shall be no discharge of wastes or wastewaters to the groundwaters or the surface waters of the state. Waste processing, treatment and disposal methods and facilities shall meet with the approval of the Chief Engineer of the Commission.

2. Liquid Industrial Wastes shall be contained and controlled in accordance with an approved pollution incident prevention plan as required by the Commission's Part 5 Rules, R 323.1162. Said plan shall be submitted to and approved by the Chief Engineer on or before November 1, 1974.

3. The existing waste inventory shall be reduced, the waste storage ponds eliminated and pollution of the groundwaters and the Trouten [sic] Drain corrected in accordance with plans approved by the Chief Engineer of the Commission which will provide for the following:

- a. Submit for approval a schedule of monthly waste inventory reduction to the Chief Engineer of the Commission which will reduce the number of drums to a base level of not more than 2500 drums by not later than June 1, 1976.
- b. By not later than November 1, 1974, eliminate the four existing waste storage ponds.
- c. By not later than October 1, 1975, complete the necessary steps to eliminate the Vinyl pond area.
- d. On or before December 1, 1974, submit an engineering report, basis of design and proposed time schedule for correcting and controlling the pollution of groundwaters and obtain the approval thereof of the Chief Engineer of the Commission.

4. A written monthly report shall be submitted to the Chief Engineer of the Commission reporting the quantity of Liquid Industrial Waste received during the month, the quantity processed and disposal of, and the quantity remaining

in storage on the site. Such reports are to be received in the Commission offices not later than the 10th day of the month following.

5. The quantity of Liquid Industrial Waste remaining in storage on the site at the end of the month, as identified in the latest monthly report, shall at no time exceed the total quantity processed and disposed of during the preceding two months, as identified in the report for the preceding month, plus the base level specified in 3 a. above, except that until 1 June 1976, the quantity remaining in storage may include the inventory remaining, consistent with the schedule identified in 3 a. above. The quantity disposed of and remaining from the reduction required by 3 a. above shall be shown as separate items in the monthly report. The method of storage and accounting of the inventory on hand shall be approved by the Chief Engineer of the Commission."

88. Defendants failed to comply with the foregoing provisions of Order No. 1739, and on November 6, 1974, WRC issued WRC Notice of Noncompliance and Order to Comply No. NC-11-74-01-0672 which stated, in part:

"WHEREAS, pursuant to Section 3(b) of the aforementioned permit and order, you were required to by not later than November 1, 1974, eliminate the four existing waste storage ponds on your property at 36345 Van Born Road, Romulus, Michigan.

WHEREAS, you notified the Chief Engineer of the Commission on October 30th that you would require an additional 60-90 days to complete the elimination of the waste ponds.

NOW THEREFORE it is hereby ordered that you will complete the elimination of the waste ponds on or before January 15, 1975, and that failure to do so may result in the initiation of appropriate legal action in accordance with the provisions of Section 10, Act 245, Public Acts of 1929, as amended."

In view of these circumstances, the BPW has directed its staff to implement the corrective action set forth in the... [September 19, 1974] notice. Accordingly, you are hereby directed to immediately remove all tap conduit within six feet of the point of connection to the City of Wayne's sewer."

92. Defendants continued in their failure to comply, both with the provisions of WRC Order No. 1739 and with Notice of Noncompliance and Order to Comply No. NC-11-74-01-0672, and on May 5, 1975, the WRC issued Notice of Noncompliance and Order to Comply No. NC-3-75-02-1134, which stated:

"PURSUANT to the terms of the aforementioned Permit and Order, you were required to perform and to submit plans and reports as required by Sections 3a, b, d, 4 and 5 of said Permit and Order as follows:

Section 3.a, submit for approval a schedule of waste inventory reduction to the Chief Engineer of the Commission which will reduce the number of drums to a base level of not more than 2,500 drums by no later than June 1, 1976;

Section 3.b, by not later than November 1, 1974, eliminate the four existing waste storage ponds;

Section 3.d, on or before December 1, 1974, submit an engineering report, basis of design and proposed time schedule for correcting and controlling the pollution of groundwaters and obtain the approval thereof of the Chief Engineer of the Commission.

Section 4. A written monthly report shall be submitted to the Chief Engineer of the Commission reporting the quantity of liquid industrial wastes received during the month, the quantity processed and disposed of, and the quantity remaining in storage on the site. Such reports are to be received in the Commission offices by not later than the 10th day of the month following.

Section 5. The quantity of liquid industrial waste remaining in storage on the site at the end of the month, as identified in the latest monthly report, shall at no time exceed the total quantity processed and disposed of during the preceding two months, as identified in the report for the preceding month, plus the base levels specified in 3.a above except that until June 1, 1976, the quantity remaining in storage may include the inventory remaining consistent with the schedule identified in 3.a above. The quantity disposed of and remaining from the reduction required by 3.a above shall be shown as separate items in the monthly report. The method of storage and the accounting of the inventory on hand shall be approved by the Chief Engineer of the Commission.

PLEASE BE ADVISED that the Water Resources Commission has to date not received the reports and plans required in the above listed permit conditions and you have not eliminated the waste ponds as required by Section 3.b of said permit.

PLEASE BE FURTHER ADVISED that a violation of the Permit and Order may subject your establishment to criminal penalties and/or civil litigation as provided for in Section 10 of Act No. 245 of the Public Acts of 1929, as amended and may result in the revocation of your permit.

THEREFORE, PLEASE BE ADVISED that unless the Department of Natural Resources receives the required plans and reports by June 1, 1975, to satisfy the aforementioned conditions of the permit and the elimination of the four ponds as required by paragraph 3.b is not accomplished by the same date, appropriate legal proceedings will be instituted against you."

93. On or before May 7, 1975, an unknown amount of lube oil spilled from Defendants' property into Trouton Drain. The matter was investigated by EPA which, on September 15, 1975, referred the matter to the Chief,

Marine Environmental Protection Branch, United States Coast Guard, Ninth Coast Guard District, "for the assessment of a civil penalty pursuant to Section 311(b)(6) of the FWPCA, 33 USC 1321 (b)(6)," further stating:

"Chemical Recovery Systems, Inc. has been responsible for numerous oil spills in the past, and, consequently, the U.S. EPA requests that this past history be taken into account in determining the civil penalty to be assessed in this case. As our ultimate concern is to avoid oil spills it seems most appropriate in this case to assess higher civil penalties as a measure of deterrence to discourage such recurring violations."

94. A WRC Staff Report, dated September 18, 1975, prepared for the October 23, 1975, WRC Hearing on "Chemical Recovery Systems, Inc.," held in Lansing, Michigan, detailed the performance of Defendants from the August 29, 1974, issuance of WRC Order No. 1739:

"On August 29, 1974, Permit and Order No. 1739 was issued to Chemical Recovery Systems, Inc., 36345 Van Born Road, Romulus, Michigan to regulate the storage and processing of liquid industrial wastes and to eliminate existing pollution by Chemical Recovery.

Section 3.b, of the Permit and Order requires the elimination of the four waste storage ponds by not later than November 1, 1974. In a letter dated October 30, 1974 the Company asked for a 60-day extension to arrange a contract with a local company to dewater and remove the semi-solids from the single remaining pond. A Notice of Noncompliance No. NC-11-74-01-0672 was issued on November 6, 1974 ordering removal by January 15, 1975. A second Notice of Noncompliance No. NC-3-75-02-1134 was issued on May 5, 1975 again ordering removal of the remaining waste storage pond. The Company responded with a letter dated May 13, 1975 promising removal of the pond in one month. Staff inspection shows that as of September 11, 1975, the waste storage pond still had not been eliminated.

Section 3.d of the Permit and Order requires on or before December 1, 1974, the Company submit an engineering report, basis of design and proposed time schedule for correcting and controlling the pollution of groundwaters and obtain the approval thereof of the Chief Engineer of the Commission. The Notice of Noncompliance dated May 5, 1975, ordered the Company to comply by June 1, 1975. In a letter dated July 14, 1975 the Company asked for a time extension of 18 months, citing limited economic resources to comply with this requirement. (Keck Consulting Services, Inc. quoted a price of \$5,239.70 to complete this project.) To date, nothing has been submitted as regards correction of the groundwater problem, and staff continues to receive complaints from private citizens regarding the odors and hazards of Trouten [sic] Drain.

Section 4 of the August, 1974 Permit and Order requires submittal of a written monthly report to the Chief Engineer of the Commission reporting the quantity of liquid industrial waste received during the month, the quantity processed and disposed of, and the quantity remaining in storage on the site. The Notice of Noncompliance dated May 5, 1975, ordered the Company to comply by June 1, 1975. To date, the Chief Engineer has not received one of these reports.

Section 5, requires the quantity of liquid industrial waste remaining in storage on the site at the end of the month, as identified in the latest monthly report shall at no time exceed the total quantity processed and disposed of during the preceding two months, as identified in the report for the preceding month. The method of storage and accounting of the inventory on hand shall be approved by the Chief Engineer of the Commission. The Notice of Noncompliance dated May 5, 1975 ordered the Company to comply by June 1, 1975, as indicated above. The Company has not submitted any of these required reports to the Chief Engineer.

In addition to the above documented instances of the Company's failure to comply with Permit and Order No. 1739, Section 3.c of the Permit and Order requires that the necessary steps be taken to eliminate the Vinyl pond area by October 1, 1975. Since cleanup of this area has not commenced, it is highly probable that the Company will also default on this requirement of the Order.

The Company has also indicated in a letter dated August 8, 1975 that they have ceased the disposal of the excess drums stored on their property. Two reasons were offered by the Company for this decision. The first was the unavailability of an acceptable land disposal site for their noncrushable drums. Secondly, the price of disposal per drum has risen excessively putting a limitation on the number of drums that can be disposed of each month.

Section 3.a of the Permit and Order requires that by June 1, 1976, the base level of drums stored on the property not exceed 2,500. Staff visit shows this as of September 11, 1975, the Company had in storage, on their property, approximately 23,000 drums. An earlier inventory conducted on April 1, 1974 showed the Company to have approximately 34,000 drums stored on their property. It would appear that the Company will have considerable difficulty reaching the base level of drum inventory by the specified date."

95. At its October 23, 1975, Hearing, WRC amended paragraph three of WRC Order No. 1739, and, in a November 7, 1975, letter to Defendants, informed them of the amendments, which read:

"3. The existing waste inventory shall be reduced, the waste storage ponds eliminated and pollution of the groundwaters and the Trouten [sic] Drain corrected in accordance with plans approved by the Chief Engineer of the Commission which will provide for the following:

a. Submit for approval a schedule of monthly waste inventory reduction to the Chief Engineer of the Commission which will reduce the number of drums to a base level of not more than 2,500 drums by not later than September 1, 1976.

b. On or before January 1, 1976 submit an engineering-geological study report and basis of design and proposed time schedule for correcting and controlling the pollution of the groundwaters identified by the study and obtain approval thereof by the Chief Engineer of the Commission.

c. No additional wastes shall be placed in the remaining storage pond or in the vinyl pond."

96. A January 16, 1976, report prepared by Keck Consulting Services, Inc., East Lansing, Michigan, at the request of Defendants, and entitled "Hydrogeologic Investigation Groundwater Contamination Study Chemical Recovery Systems, Inc., Romulus, Michigan," found that:

"Chemicals that have been placed on the ground surface and/or buried are being leached into the ground water. The ground water is under water table conditions and moves to the east into the Troutman [sic] Drain. This pattern will continue for some time until all of the chemicals have been leached from the soil."

97. After additional delays, meetings, and exchanges of letters with Defendants, WRC, on May 18, 1976, issued WRC Permit No. 1739, superseding WRC Order No. 1739, which had been originally issued on August 29, 1974, "to regulate the storage and processing of liquid industrial wastes and to eliminate existing pollution by Chemical Recovery Systems, Inc. at its site located at 36345 Van Born Road, Romulus, Michigan."



98. WRC Permit No. 1739 required that "Chemical Recovery Systems, Inc., its agents or successors...store and process liquid industrial wastes at its above described site and...eliminate existing pollution in accordance with the following [amended special] conditions and restrictions:"

"1. There shall be no discharge of wastes or wastewaters to the groundwaters or the surface waters of the state.

2. Liquid Industrial Wastes shall be contained and controlled in accordance with an approved pollution incident prevention plan as required by the Commission's Part 5 Rules, R. 323.1162.

3. The existing waste inventory shall be reduced, pollution from the waste storage ponds eliminated and pollution of the groundwaters and the Trouten [sic] Drain corrected in accordance with the following:

a. Reduce the number of drums to a base level of not more than 2500 drums by September 1, 1976.

b. Submit for approval to the Chief Engineer of the Commission the following:

1) On or before April 15, 1976, supplemental information to the previously submitted hydrogeological report regarding the groundwater pollution resulting from the waste storage ponds, and alternative disposal methods for the projected accumulation of polluted water captured by the proposed groundwater intercept system.

2) On or before May 1, 1976, submit the engineering plans for the construction of the groundwater intercept system and plans for the disposal of the vinyl pond and remaining waste storage pond, if the need for removal is indicated by supplemental information required by b.1 of this paragraph.

- c. On or before June 1, 1976, begin construction of the approved groundwater intercept system.
- d. On or before July 1, 1976, complete construction and place into continuous operation the approved groundwater intercept system.

4. A written monthly report shall be submitted to the Chief Engineer of the Commission reporting the quantity of Liquid Industrial Waste received during the month, the quantity processed and disposed of, and the quantity remaining in storage on the site. Such reports are to be received in the Commission offices not later than the 10th day of the month following.

5. The quantity of Liquid Industrial Waste remaining in storage on the site at the end of the month, as identified in the latest monthly report, shall at no time exceed the total quantity processed and disposed of during the preceding two months, as identified in the report for the preceding month, plus the base level specified in 3a above, except that until September 1, 1976, a larger inventory will be allowed if it is being uniformly reduced in accordance with a schedule of inventory reduction approved by the Chief Engineer of the Commission. The quantity disposed of and remaining from the reduction required by 3a above shall be shown as separate items in the monthly report. The method of storage and accounting of the inventory on hand shall be approved by the Chief Engineer of the Commission."

99. A May 24, 1977 Facility Inspection of Defendants' property by the Oil and Hazardous Materials Control Section, Water Quality Division, DNR (hereinafter, OHM) revealed that there were approximately 1,686 waste drums on the east side of Defendants' property and approximately 3,400 waste and reclaimed drums on the west side of Defendants' property, and that Defendants' had failed to eliminate the sand-lined seepage lagoons, in violation of the provisions of WRC

Permit No. 1739. The inspection also revealed that Defendants had failed to provide diking for all storage and use areas, as required to comply with WRC Permit No. 1739 and Part 5 of WRC Rules. Defendants were requested to submit a timetable for elimination of the foregoing violations and for compliance with Permit No. 1739. ..

100. A May 9, 1978, Facility Inspection of Defendants' property by OHM reported:

"Received several complaints via PEAS [Pollution Emergency Alert System] RE: odors from company and the drain. Problems exist in drum storage and runoff from property. Odors are coming from the drain. The water in the drain is a milky white changing to bluish-purple at the water's edge. Small traces of oil are visible."

101. On May 26, 1978, a public hearing was held in Romulus, Michigan, regarding water quality problems and nuisance conditions in Trouton Drain. According to a June 16, 1978, DNR memorandum:

"Citizens complained of terrible odors coming from the drain which were especially bad at night. They felt the odors were being caused by Chemical Recovery Systems, Inc. Their solution to the problem was to fill the drain in or to close Chemical Recovery Systems down until the problem was corrected."

102. On June 14, 1978, DNR personnel completed "a biological evaluation of the Trouton Drain - Ecorse River headwaters to determine the impacts of contaminated groundwater from Chemical Recovery Systems, Inc. of Romulus, on the receiving waters." That evaluation reported that:

"Trouton Drain begins near Van Born Road northwest of Romulus and flows south and east about 1.6 km before crossing Wayne Road and becoming the headwaters of the Ecorse River. Chemical Recovery Systems is located adjacent to the drain near Van Born Road. A series of lagoons near the drain have been used for a number of years for the disposal of industrial liquid wastes and solvents. Inadequate sealing of the lagoons has resulted in the groundwater being highly contaminated with these wastes....

In the upper 0.5 km of the drain visible plants and animals were absent. Some recovery was indicated 1.0 km below Chemical Recovery Systems as a few aquatic plants and animals were visible. These observations suggest that either the contaminants are biodegradable, readily lost to the air, or both. Given the stench associated with this ditch loss to the air was obviously a route of contaminant loss.

\* \* \*

Gradual increases in plants and animals further downstream revealed improved conditions, although only pollution tolerant forms were present. At Beverly Road, open pools within the profuse filamentous algal growths, had large numbers of mosquito larvae. These insects would be pests in the adjacent neighborhood and possible disease vectors. Ultimate control of mosquitoes in this situation can best be obtained by elimination pools in the drain by proper dredging.

Other than the obvious impacts on stream biota, the greatest concern of the people living near Trouton Drain is the over-powering stench during the summer. The obnoxious odor is present both when the stream is flowing and after it dries up. Apparently, the contaminants in the sludge deposited in the bottom of the drain continue to be released as one riparian indicated near Wayne Road. Removal of the accumulated sludge above Joan Street should be completed at a minimum, and possibly further downstream if sludge accumulations are evident and odors persist after the contaminated groundwater is stopped from entering the drain."

103. Based upon these observations and upon waters and sediment samples taken from Trouton Drain above, opposite, and downstream from Defendants' property, the following Findings, Conclusions, and Recommendations were made:

"Findings and Conclusions

1. More than 1.6 km of Trouton Drain-Ecorse River were grossly polluted downstream of the entry of contaminated groundwater from Chemical Recovery Systems, Inc. as indicated by the aquatic plants and animals as well as the ever present foul odor.
2. At least the 0.5 km of Trouton Drain between Chemical Recovery Systems, Inc. and Joan Street was devoid of visible plant and animal life.
3. Some reduction in the severity of toxic conditions was evident 1.0 km below Chemical Recovery Systems, Inc. where algae and some aquatic organisms were present. Many mosquito larvae were living in pools and upon emergence would be a pest in the surrounding neighborhood.
4. Further improvement in stream quality was evident 1.6 km downstream of Chemical Recovery Systems, Inc. However, only organisms tolerant of highly polluted waters were found.

Recommendations

1. Contaminated groundwaters from Chemical Recovery Systems, Inc. should be prevented from flowing to Trouton Drain and the Ecorse River, immediately.
2. Sludges should be removed from the stream bed during the dry season to eliminate the odor problem, especially upstream of Joan Street.
3. Sludge deposits below Joan Street should be evaluated during late summer to further document their extent and relationship to odor problems and determine if removal would be required."

104. A June 19, 1978 DNR memorandum, from the Chief of the Water Quality Division, to the Chief of the Environmental Enforcement Division, detailed the performance of Defendants from the May 18, 1976, issuance of WRC Permit No. 1739:

"[P]ermit violations have been reviewed by Frank Opolka with staff of the Oil & Hazardous Materials Control Section. Permit violations are as follows:

- 1) failure to continuously operate the groundwater intercept system which was installed to prevent contaminated groundwater from entering Trouton Drain.
- 2) Exceeding the drum storage inventory limit of 2,500 drums. The Company has approximately 5,000 drums in storage at this time of which 2,000 contain waste materials, the remaining containing dirty solvents to be reclaimed.
- 3) Failure to fully comply with the Part 5 diking requirements. The Company has some tanks plus their drum storage area that is not diked properly as is required for polluting materials in the Part 5 Rules, Act 245, P.A. 1929, as amended.
- 4) Failure to submit monthly reports of the amount of waste processed and disposed of and the quantity of waste remaining on the site each month."

105. On June 29, 1978, Dr. Howard A. Tanner, Director of DNR appointed a Special Task Force to conduct "a full investigation...to determine the proximate cause of the pollution of Trouton Drain...and take whatever action necessary to abate the source of pollution and formulate a

cleanup plan to return Trouton Drain to an acceptable condition." The Task Force consisted of representatives from the Environmental Enforcement, Water Quality, Environmental Services, Geological Survey, and Information and Education Divisions of DNR. Included on the Task Force were experts specializing in such fields as engineering, biology, geology, chemistry, oil and hazardous materials, and toxic materials.

106. In a March 14, 1979, letter to DNR, Defendants, in lieu of full and immediate compliance with the provisions of WRC Permit No. 1739, issued on May 18, 1976, submitted several minimal proposals for corrective action regarding "Excavation of 'Vinyl Pond' and 'East Pond,'" "Effectiveness of existing underdrain system," "Evaluation of Northeast area as to degree of contamination," and, "Secondary Containment."

107. According to a March 16, 1979, Report of Oil, Salt, or Polluting Material Losses filed with DNR by Defendants, on March 12, 1979, a 40,000 gallon capacity tank which holds water pumped from the underdrain overflowed onto the northeast section of Defendants' property. Although the underdrain was designed to intercept the contaminated groundwater beneath Defendants' property before it reached Trouton Drain, Defendants stated: "Chemical Recovery does not consider this a spill or loss of polluting material. This form is only being filled out as a courtesy...."

108. Defendants' property was visited by DNR personnel on March 13, 1979, and, according to a March 26, 1979, DNR memorandum, DNR personnel "observed material from the aboveground [waste solvent storage] tank on the east side of the Ziebart processing building overflowing. The material spilled to the ground and flowed on top of the ground to the east. Approximately 100 gallons spilled. The material had a solvent odor." As the DNR memorandum further noted, "Joe Heimbuch, (Chemical Recovery employee)... indicated they had stored waste butyl alcohol in the tank in the summer of 1978. They had neglected to maintain an inventory of the tank which resulted in the overflow...." Laboratory analysis of the spillage to the ground from the overflow of the tank revealed the presence of Benzene, Toluene, Xylene, Methyl Ethyl Ketone, and Methyl Isobutyl Ketone.

109. According to an April 23, 1979, DNR memorandum concerning April 11, 1979, and April 17, 1979, visits to Defendants' property:

"We were at the site to obtain groundwater elevation data relative to groundwater migration. While collecting the data we saw a submersible pump pumping out obviously polluted water from a diked bulk storage area onto the ground.

On April 17, 1979 I returned to Chemical Recovery to collect samples of the water in the diked area. Water was not coming out of the submersible pump, but evidence indicated that it had just been shut off. Water on the ground was still running away from the pump hose.



On both April 11 and April 17, I instructed Mr. J.A. Heimbuch that his pumping practice was in violation of Act 245. He contended that it was only rain water that he was pumping out. He also added that even if the water was polluted it wasn't hurting anything because the ground on the plant site was contaminated anyway."

Laboratory analysis of samples taken from the diked area revealed the presence of Benzene, Toluene, and Xylene.

110. In a May 11, 1979, letter to Defendants, DNR, based upon the investigation and findings of the Groundwater Geology Unit, Geological Survey Division, DNR (hereinafter, GGU), as expressed in its April 17, 1979, Final Report (compiled as part of the Task Force investigation), responded to the minimal proposals set forth in Defendants' March 14, 1979, letter as follows:

"[We suggest the] installation of three additional wells between the intercept tile and Trouton drain, to establish a groundwater gradient toward the intercept tile, and evaluate the possibilities of mounding due to the east pond or a groundwater divide in this area.

In addition to the ponds, we have confirmed the presence of contaminated soil southeast and northeast of the ponds, which should be removed. The contaminated area to the southeast is a triangular area approximately 211' by 380' by 338' with clay lying 10' below the surface. Total volume is estimated to be 40,000 cubic yards. The former barrel storage area in the northeast corner of the site contains approximately 28,500 cubic yards of contaminated soil. Your estimate of 8,000 cubic yards of material in the vinyl chloride pond and the east pond is rather conservative. By measuring the area of the ponds on the aerial photo and calculating volumes, we estimate 15,300 cubic yards of material to be removed.

Additionally we recommend extending the intercept tile to the fence at the north property line near the former barrel storage area. Continuous operation of the intercept tile is required if it can be demonstrated to be effective. If, on the other hand, the tile is found to be incapable of maintaining the water table below Trouton Drain, then further study is necessary and the system may have to be redesigned or another method of containment designed. If the intercept system is utilized, sampling all monitoring wells between the interceptor system and Trouton Drain, is necessary to evaluate its effectiveness.

We feel Trouton Drain should be enclosed with a sealed tile for at least the length of your property. The tile should be so constructed to provide adequate surface drainage for the property owners to the east of Chemical Recovery.

Secondary containment for bulk storage areas, drum storage, bulk loading and unloading areas must be constructed to prevent any spillage from entering any sewer, ground, or surface water of the State. Containment structures shall be constructed in accordance with your Pollution Incident Prevention Plan. In addition, the maximum amount of drum storage for spent solvents is limited to 2,000 [sic] drums by your State issued permit.

Disposal of rain water run off from your truck dock area and old bulk storage area are presently being pumped on the ground and must cease. Samples of the run off water indicated it is highly contaminated. You must make arrangements for approved disposal of this material possibly to the sanitary sewer system.

We believe it is necessary to enter into a formalized agreement between yourself and the Department of Natural Resources to assure that there is a full understanding of what is necessary that the plan will be carried out."

111. On May 29, 1979, the "Task Force Report - Chemical Recovery Systems, Inc., Romulus, Michigan" was issued and forwarded to the Director of DNR. The Task Force Report, based upon the almost year-long, interdisciplinary study of the problem and, in particular, upon the investigation and findings of the GGU as expressed in its April 17, 1979, Final Report (which formed the basis for DNR's May 11, 1979, response to Defendants' minimal proposals), concluded that:

"It is apparent that several contaminated plumes are present beneath the Chemical Recovery Systems site which are traveling generally southeast toward Trouton Drain. Approximately 7.5 acres of their 15.3 acre site appears to be heavily contaminated based on the data we collected.

We feel the three major sources of contamination are the vinyl pond, the small pond east of the vinyl pond and the formal barrel storage area in the northeast corner of the site. The Geology of the site indicates that approximately 10 feet of superficial sand overlaying the confining clay have been contaminated...."

112. The recommendations contained within DNR's May 11, 1979, letter were mirrored by those set forth in the Task Force Report, which closed with the following three paragraphs:

"The Company should be required to enter into a legal agreement to insure the provisions of their plan are properly carried out.

Enforcement action should be taken on any additional violations of State statutes to assure the company maintains proper housekeeping practices to prevent additional contaminants from reaching the waters of the State.

Enforcement action should be taken also if the company fails to submit an acceptable plan for their site clean-up."

113. A May 30, 1979, Facility Inspection of Defendants' property by OHM reported:

"The groundwater interceptor was not operating. The sump was full of water. We observed a flatbed trailer there full of what appeared to be waste drums. The trailer was not stickered or lettered...."

114. On July 17, 1979, a public hearing was held in Romulus, Michigan, regarding the pollution problems at Defendants' property. According to a July 20, 1979, DNR memorandum:

"Many citizens presented their views of the problem. Most notably the citizens complained of severe odor problems, obnoxious odors which literally required them to shut themselves up in their houses or leave the area... [odors which are] emanating [sic] from the polluted drain which flows through the neighborhood... [pollution which is] originating from highly contaminated sediments and sludges on Chem Recovery property."

115. In a July 17, 1979, letter to DNR, Defendants reacted to DNR's May 11, 1979, criticisms of their original proposals by re-stating their original proposals, totally rejecting the Department's suggestions, and impliedly threatening that Defendants would finally comply with the provisions of the May 18, 1976, WRC Permit No. 1739 and take care of the long-standing pollution of their property in their own manner, in their own time -- or not at all. Defendants responded, in part:

"We definitely do not agree with the following:

1. Removal of an additional 68,500 cubic yards of dirt at an estimated cost of \$735,000.00! This proposal by the DNR again points out the total lack of reality on the part of your office. First you want an effective underdrain system that would resolve the ground contamination problem then you want to remove the ground at a cost far exceeding the value of the property!

2. Enclosing the Trouton Drain will be unnecessary if we adhere to our previous agreed upon evaluation of the underdrain system and its remedies.

3. As long as drums are stored in an acceptable manner as outlined by your office we see no legal basis for limiting the number thus infringing upon our right to 'do business' as we see fit.

In closing, Chemical Recovery Systems does not feel it is necessary to enter into a formalized agreement with the DNR nor establish time tables for the completion of the above. We have and will continue to cooperate, within reason, with the DNR in trying to resolve these problems as quickly as possible. Our sincerity and resolve is shown by our immediate initiation of the secondary confinement program and the removal of the 'vinyl pond.' Expenditure of three-quarters of a million dollars to date for clean-up of someone else's mess should also prove our dedication to these mutual projects! We shall continue these programs, within our economic means, until a permanent solution is attained."

116. DNR reviewed the July 17, 1979, "revision" of Defendants' March 14, 1979, cleanup proposal and, in a July 26, 1979, letter to Defendants, once again noted that the proposal was inadequate in several areas:

#### "I. Excavation of Contaminated Soil

The July 17, 1979 submittal offered no revisions to the March 14 proposal: excavation of 'vinyl pond' and 'east pond'. The March 14, 1979, submittal estimated the excavated material to be approximately 8,000 cubic yards. We feel this estimate is quite low and estimate the volume to be approximately 15,300 cubic yards.

In addition to the east pond and vinyl pond, the triangular shaped area to the southeast of the ponds, approximately 211 feet by 380 feet by 338 feet, constituting approximately 40,000 cubic yards, also must be excavated.

Also, the former barrel storage area in the northeast corner of the site containing approximately 28,500 cubic yards must be excavated.

#### II. Effectiveness of the Underdrain System

In addition to your proposal, three additional wells must be installed between the intercept tile and Trouton Drain to establish the groundwater gradient and evaluate the possibility of mounding due to the 'east pond' or a possible groundwater divide in the area.

#### III. Northeast Corner of Property

The groundwater intercept tile must be extended to the fenced area on the north property line near the former barrel storage area. State sample results show high contamination in this area.

#### IV. Provide Secondary Containment

In addition to providing secondary containment for all storage areas, including drums, containment for loading and unloading areas must be provided. The areas shall be so constructed as to prevent any spillage from entering any sewer, ground or surface water of the state. The number of drums stored on site at any one time shall not exceed a total of 2,500.

V. Trouton Drain

A. Trouton [sic] Drain must be enclosed with a sealed tile for at least the length of your property. It must be so constructed to provide adequate drainage for the property owners to the east of Chemical Recovery.

B. Contaminated surface water runoff must be collected and disposed of in accordance with an approved program.

VI. Schedule for Implementation

A. Excavation of contaminated soils shall be completed by November 15, 1979.

B. Effectiveness of underdrain system and installation of the new system if necessary shall begin immediately and be completed by no later than November 15, 1979.

C. Extension of the groundwater intercept tile to the northeast corner of the property [sic] must be completed by November 15, 1979.

D. New secondary containment for bulk storage, loading/unloading areas and barrels storage shall be constructed prior to first use. Existing bulk storage, loading/unloading areas and barrel storage areas shall be constructed with an approved secondary containment or eliminated by August 1, 1980. Drum storage shall not exceed 2,500 drums effective September 1, 1980.

E. Trouton Drain shall be enclosed with a sealed tile for at least the length of property by November 15, 1979.

The July 17, 1979 revision to the March 14, 1979 proposal is unacceptable. Chemical Recovery Systems, Inc.'s position that it is not necessary to enter into a formalized agreement with the Department nor to establish timetables for the completion of the report of the corrective program is completely unacceptable.

We feel the program outlined above is necessary and reasonable. We are offering you this opportunity to agree to the entry of a legally enforceable document containing the above requirements and time schedules. Please respond in writing to this agency by no later than August 3, 1979 stating your willingness to enter into such a legally binding agreement."

117. As of the date of the filing of this Complaint, Defendants have failed and refused to enter into any legally binding agreement, setting forth requirements and time schedules, as called for in the foregoing July 26, 1979, letter from DNR, and Defendants remain in noncompliance with, and in violation of, the provisions of WRC Permit No. 1739, issued May 18, 1976.

#### V. VIOLATIONS OF LAW

##### COUNT I

##### Water Resources Commission Act - Violation of Permit

118. Paragraphs 1-117 of this Complaint are incorporated by reference.

119. In Const 1963, art 4, §§51 and 52, the people of the State have commanded:

"The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health."

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"The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment, and destruction."



120. The Water Resources Commission Act, 1929 PA 245; MCLA 323.1 et seq; MSA 3.521 et seq; the title of which is reproduced, in part, below, is an expression of the Michigan legislature which comports with the foregoing Constitutional directive of the people of the State:

"An act to create a water resources commission to protect and conserve the water resources of the state, to have control over the pollution of any waters of the state and the Great Lakes, ....to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit the pollution of any waters of the state and the Great Lakes...."

121. In a manner consistent with the Constitutional provisions of art 4, §§51 and 52, the legislature has, in 1929 PA 245, §§2 and 3; MCLA 323.2 et seq; MSA 3.522 et seq; directed WRC to protect and conserve the surface and underground waters of the state and Great Lakes from waste pollution from any industry or other entity. The same sections direct WRC to enforce the act, promulgate rules deemed necessary to carry out its provisions, and to bring any appropriate action on behalf of the people of Michigan which may be necessary to carry out or enforce the act's provisions.\*

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\* Certain authority, powers, duties, functions and responsibilities of WRC have been transferred to DNR. See Executive Orders 1973-2 and 1976-8.

122. In §5 of 1929 PA 245; MCLA 323.5; MSA 3.525;  
the legislature provided that:

"The commission shall establish such pollution standards for lakes, rivers, streams and other waters of the state in relation to public use to which they are or may be put, as it shall deem necessary. It shall issue permits which will assure compliance with state standards to regulate municipal, industrial and commercial discharges or storage of any substance which may affect the quality of the waters of the state....It may make rules and orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake, river, stream or other waters of the state. It shall take all appropriate steps to prevent any pollution which is deemed by the commission to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream or other waters of the state."

123. In §7 of 1929 PA 245; MCLA 323.7; MSA 3.527; the legislature also provided that:

"(1) After April 15, 1973, a person shall not discharge any waste or waste effluent into the waters of this state unless he is in possession of a valid permit therefor from the commission. Compliance with the terms of an outstanding order of determination or final order of determination or stipulation with the commission that is in effect on April 15, 1973, shall be deemed to meet the requirements of this section until the commission issues its permit. The commission shall condition the continued validity of a permit upon the permittee's accomplishment of such effluent requirements as the commission deems necessary to prevent unlawful pollution by such dates as the commission deems to be reasonable and necessary and to assure compliance with applicable federal law and regulations."

124. Section 10 of the Water Resources Commission Act, 1929 PA 245; MCLA 323.10; MSA 3.529(1); provides enforcement penalties for violation of the act, and states in part:

"(1) The commission\* may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this act or rules promulgated hereunder. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil penalty of not more than \$10,000.00 per day of violation.

(2) ...In addition to a fine, the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation...."

125. Defendants have violated §7(1) of the Water Resources Commission Act, 1929 PA 245; MCLA 323.7; MSA 3.527; by directly and indirectly discharging hazardous and toxic materials, including the chemicals listed in paragraphs 33-54 of this Complaint, into the surface and groundwaters of this State by dumping said hazardous and toxic materials onto the ground, or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise

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\* Certain authority, powers, duties, functions and responsibilities of WRC have been transferred to DNR. See Executive Orders 1973-2 and 1976-8.

maintaining, sand-lined seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials, in violation of the conditions, restrictions, and requirements of WRC Permit No. 1739, issued May 18, 1976, and in violation of the conditions, restrictions, and requirements of those WRC Orders superseded by WRC Permit No. 1739, and by otherwise failing or refusing to comply with the conditions, restrictions, and requirements of WRC Permit No. 1739, and those WRC Orders it superseded including, but not limited to, conditions, restrictions, and requirements pertaining to containment and control of liquid industrial wastes, reduction of existing waste inventory, and construction, completion, and continuous operation of an effective groundwater intercept system.

## COUNT II

### Water Resources Commission Act - Unlawful Discharge

126. Paragraphs 1-125 of this Complaint are incorporated by reference.

127. In §6(a) of 1929 PA 245; MCLA 323.6; MSA 3.526; the legislature provided that:

"Sec. 6(a) It shall be unlawful for any persons directly or indirectly to discharge into the waters of the state any substance which is or may become injurious to the public health, safety or welfare; or which is or may become injurious to domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of such waters; or which is or may become injurious to the value or utility of riparian lands; or which is or may become injurious to livestock, wild animals, birds, fish, aquatic life, or plants or the growth or the propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired."

128. Defendants' direct or indirect discharges of hazardous and toxic materials, including the chemicals listed in paragraphs 33-54 of this Complaint, into the surface and groundwaters of this State by dumping said hazardous and toxic materials onto the ground, or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise maintaining, sand-lined seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials, have been, are now, and will continue to be injurious to the public health, safety or welfare; have been, are now, and will continue to be injurious to domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of such waters; have been, are now, and will continue to be injurious to the value or utility of riparian lands; have been, are now, and will continue to be injurious to livestock, wild animals, birds, fish, aquatic life, or plants or to the growth or the propagation thereof; and have been, are now, and will continue to impair or destroy the value of fish or game, and are therefore in violation of §6(a) of the Water Resources Commission Act, 1929 PA 245; MCLA 323.6(a); MSA 3.526(a).

COUNT III

Water Resources Commission Act - Statutory Nuisance

129. Paragraphs 1-128 of this Complaint are incorporated by reference.

130. An unlawful activity is a public nuisance.

131. In §6(a) of 1929 PA 245; MCLA 323.6(a); MSA 3.526(a); the legislature provided that:

"Sec. 6(a) It shall be unlawful for any persons directly or indirectly to discharge into the waters of the state any substance which is or may become injurious to the public health, safety or welfare; or which is or may become injurious to domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of such waters; or which is or may become injurious to the value or utility of riparian lands; or which is or may become injurious to livestock, wild animals, birds, fish, aquatic life, or plants or the growth or the propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired."

132. In §6(c) of 1929 PA 245; MCLA 323.6(c); MSA 3.526(c); the legislature further provided that:

"(c) A violation of a provision of this section shall be prima facie evidence of the existence of a public nuisance and in addition to the remedies provided for in this act may be abated according to law in an action brought by the attorney general in a court of competent jurisdiction."

133. As set forth in Count II of this Complaint, Defendants' direct or indirect discharges of hazardous and toxic materials, including the chemicals listed in paragraphs 33-54 of this Complaint, into the surface and groundwaters of this State, by dumping said hazardous and toxic materials onto the ground, or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise maintaining, sand-lined seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials, are in violation of §6(a) of the Water Resources Commission Act, 1929 PA 245; MCLA 323.6(a); MSA 3.526(a); and therefore constitute a statutory public nuisance within the meaning of the language contained in §6(c) of the Water Resources Commission Act, 1929 PA 245; MCLA 323.6(c); MSA 3.526(c).

#### COUNT IV

##### Environmental Protection Act

134. Paragraphs 1-133 of this Complaint are incorporated by reference.

135. In Const 1963, art 4, §§51 and 52, the people of the State have commanded:

"The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health."

\* \* \*

"The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment, and destruction."

136. In response to that charge, the legislature enacted the Thomas J. Anderson, Gordon Rockwell Environmental Protection Act, 1970 PA 127; MCLA 691.1201 et seq; MSA 14.528(201) et seq; "for the protection of the air, water and other natural resources and the public trust."

137. Section 2(1) of the Environmental Protection Act, 1970 PA 127; MCLA 691.1202(1); MSA 14.528(202)(1); provides in part:

"The Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person ... may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against ... any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction."

138. Section 4(1) of the Environmental Protection Act, 1970 PA 127; MCLA 691.1204(1); MSA 14.528(204)(1); provides:

"The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction."



139. Section 5(2) of the Environmental Protection Act, 1970 PA 127; MCLA 691.1205(2); MSA 14.528(205)(2); provides:

"In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare."

140. In interpreting and applying the Environmental Protection Act, 1970 PA 127; MCLA 691.1201 et seq; MSA 14.528(201) et seq; the Michigan Supreme Court has emphasized a Defendant's duty to the people of Michigan:

"the [Michigan] EPA does more than give standing to the public and grant equitable powers to the circuit courts, it also imposes a duty on individuals and organizations both in the public and private sectors to prevent or minimize degradation of the environment."

Ray v Mason County Drain Commissioner,  
393 Mich 294, 306; 224 NW 2d 883, 888 (1975).

141. Defendants' direct or indirect discharges of hazardous and toxic materials, including the chemicals listed in paragraphs 33-54 of this Complaint, into the surface and groundwaters of this State, by dumping said hazardous and toxic materials onto the ground, or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise maintaining, sand-lined seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials, and Defendants willful and long-standing resistance to

ending said discharges, Defendants' willful and long-standing resistance to the implementation of the corrective measures necessary to abate Defendants' pollution of the environment, and Defendants' callous disregard for the waters of this State, constitute a violation of the policy enunciated in Mich Const, art 4, §§51 and 52, and a violation of the provisions of the Environmental Protection Act, 1970 PA 127; MCLA 691.1201 et seq; MSA 14.528(201), et seq; and is in violation of Defendants' duty to prevent or minimize harm to the environment. Equitable court action is therefore necessary, pursuant to the Environmental Protection Act, to prevent pollution, impairment, and destruction of the water resources of the State.

142. Since Defendants' 1971 purchase of the property located at 36345 Van Born Road, Romulus, Michigan, from Cam Chem Company, and since Defendants' 1971 take-over of Cam Chem Company's operations at that site, with full knowledge both of the pre-existing condition of the property and of the provisions of WRC Order No. 1212 directed to "Cam Chem Company...or its successors," Defendants have continuously threatened WRC and DNR that, if Defendants were required to fully implement all corrective measures necessary to abate Defendants' pollution of the environment (those corrective measures set forth in VI Relief, paragraph A of this Complaint), Defendants would terminate their operations at the Romulus site, and would leave the City and citizens of Romulus, Wayne County and its citizens, WRC, DNR, and the people of the State of Michigan, with the long-standing pollution, impairment, and destruction of the environment which Defendants, since 1971, have willfully failed and refused to remedy.

143. In order to protect its continued equitable jurisdiction in this case and its authority to prevent the pollution, impairment, or destruction of the water resources of this State, the Court, pursuant to §4(1) of the Environmental Protection Act, 1970 PA 127; MCLA 691.1204(1); MSA 14.528(204)(1); is requested to require that Defendants post a pre-trial bond sufficient to assure that, if ordered by this Court to implement the corrective measures set forth in VI. Relief, paragraph A of this Complaint, Defendants will not respond to this Court by carrying out the same threats Defendants have made to WRC and DNR. DNR has estimated that the cost of a partial list of the corrective measures listed in VI. Relief, paragraph A of this Complaint would be approximately \$870,000.00.

#### COUNT V

##### Common Law Nuisance

144. Paragraphs 1-143 of this Complaint are incorporated by reference.

145. Even without regard to specific violations of statutory law, Defendants' direct or indirect discharges of hazardous and toxic materials, including the chemicals listed in paragraphs 33-54 of this Complaint, into the surface and groundwaters of this State, by dumping said hazardous and toxic materials onto the ground, or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise maintaining, sand-lined

seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials, constitute a public nuisance which injures and continues to threaten the natural resources and the health, safety, and welfare of the people of this State.

#### COUNT VI

##### Violation of the Public Trust

146. Paragraphs 1-145 of this Complaint are incorporated by reference.

147. In Const 1963, art 4, §52, the people have commanded:

"The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment, and destruction."

148. Section 2(1) of the Environmental Protection Act, 1970 PA 127; MCLA 691.1202(1); MSA 14.528(202)(1); provides in part:

"The Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person ... may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against ... any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction."  
(Emphasis supplied)

149. The waters of Trouton Drain and Ecorse Creek, the lands underlying such waters, and the fish and aquatic organisms contained therein, are within the public trust.

150. The groundwaters of this State are a natural resource within the public trust.

151. Plaintiffs have not only the right but also the affirmative responsibility to ensure that the rights of the public are protected and to seek compensation for any diminution in the public trust corpus.

152. Defendants' conduct, as alleged above, constitutes a direct, persistent, and continuing impairment of the public trust.

#### COUNT VII

##### Unjust Enrichment

153. Paragraphs 1-152 of this Complaint are incorporated by reference.

154. Unjust enrichment is the result or effect of a failure to make restitution for property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor.

155. Defendants' direct or indirect discharges of hazardous and toxic materials, including the chemicals listed in paragraphs 33-54 of this Complaint, into the surface and groundwaters of this State, by dumping said hazardous and toxic materials onto the ground, or into sand-lined seepage lagoons, or by failing or refusing to remove and eliminate, and otherwise maintaining, sand-lined seepage lagoons and other polluted areas of Defendants' property contaminated with said hazardous and toxic materials, constitute not only a violation of the laws of this State, but also an unjust and inequitable shift of Defendants' true cost of doing business onto the people of the State of Michigan, and onto the persons neighboring Defendants' property, who possess legitimate rights or privileges to utilize the local surface and groundwaters for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes, and therefore constitute an unjust enrichment on the part of Defendants.

#### VI RELIEF

WHEREFORE, Plaintiffs request this Honorable Court to provide the following relief:

A. Issue a preliminary and permanent injunction, which would, as a minimum, order Defendants, jointly and severally, to:

- 1) Completely eliminate the sand-lined seepage lagoons known as the "vinyl pond" and "east pond," and remove, transport, and dispose of the liquid, semi-solid, and solid materials contained therein, at a location, and in a manner, approved by DNR;

2) Remove and transport 83,800 cubic yards of contaminated soil from Defendants' property, to-wit:

a) 15,300 cubic yards of contaminated soil from the areas surrounding the sand-lined seepage lagoons known as the "vinyl pond" and "east pond" located on Defendants' property;

b) 40,000 cubic yards of contaminated soil from the triangular shaped area located on Defendants' property southeast of the ponds, approximately 211 feet by 380 feet by 338 feet;

c) 28,500 cubic yards of contaminated soil from the former barrel storage area located in the northeast corner of Defendants' property;

3) Dispose of the 83,800 cubic yards of contaminated soil at a location, and in a manner, approved by DNR;

4) Backfill the foregoing excavated areas with 83,800 cubic yards of clean fill in a manner approved by DNR;

5) Remove all contaminated sludges and abate any existing sediment contamination of Trouton Drain and Ecorse Creek and return Trouton Drain and Ecorse Creek to the State in which they existed prior to the commencement of the operations covered by WRC Order No. 1212 on Defendants' property;

6) Extend the groundwater intercept tile to the northern property line of Defendants' property, near the former barrel storage area, an area in which state samples have shown high contamination;

7) Re-grade the surface of Defendants' property in a manner which will prevent any surface runoff from entering and contaminating Trouton Drain, and in a manner which will assure the effective operation of the groundwater intercept tile;

8) Install three additional wells between the intercept tile and Trouton Drain to establish the groundwater gradient and evaluate the possibility of mounding due to the "east pond," or a possible groundwater divide in the area, and make any corrective modification of the groundwater intercept tile system determined by DNR to be necessary, based upon the monitoring of these wells, to assure that all contaminated groundwater flows to and is collected by the groundwater intercept tile, and is disposed of at a location, and in a manner, approved by DNR;



✓ 9) Reduce and maintain the number of drums stored on Defendants' property at any one time to a figure not to exceed a total of 2,500 or, if Defendants can demonstrate a legitimate business need therefor, a larger inventory of drums, the number of drums to be clearly specified, and in no event to exceed 6,000;

✓ 10) Install secondary containment for all storage areas on Defendants' property, including drum storage areas, loading and unloading areas; the containment must be constructed so as to prevent any materials contained therein from spilling upon the ground or from otherwise directly or indirectly entering any sewer, ground, or surface water of this State;

11) Enclose Trouton Drain with a sealed tile for at least the length of Defendants' property; the sealed tile must be equipped with catch basins and must be so constructed as to provide adequate surface drainage for the property owners to the east of Defendants' property; or, in the alternative, provide an acceptable system which will operate in a manner redundant (i.e., as a back-up system) to the existing groundwater intercept system, such as the construction of a parallel groundwater intercept tile between the "east pond" and Trouton Drain, coupled with the construction of containment diking along east property line of Defendants' property as it borders on Trouton Drain;

B. Issue an Order directing Defendants, jointly and severally, to implement and complete the foregoing corrective measures pursuant to a firmly scheduled timetable therefor established by DNR;

C. Issue an Order directing Defendants, jointly and severally, to post a one million dollar (\$1,000,000) pre-trial bond, in order to protect the Court's continued equitable jurisdiction and authority or, in the alternative, restraining Defendants from dissolving Defendant Chemical Recovery Systems, Inc., and/or Defendant M.S.&N. Corporation, and/or Defendant Nolwood Chemical Corporation, and further restraining Defendants, jointly and severally, from removing and/or liquidating any or all of the assets of any or all of the three Defendant corporations pending final judgment in this case, except that Defendants may be permitted to call upon such assets to maintain normal, ongoing business operations, the nature and extent of which shall be determined in light of Defendants' operations since the 1971 incorporation of Defendant Chemical Recovery Systems, Inc.

D. Impose a civil penalty upon Defendants, jointly or severally, of ten thousand dollars (\$10,000) for each day Defendants are in violation of any provision of the DNR-established, Court-ordered corrective timetable;

E. Issue an Order directing Defendants, jointly or severally, to pay the damages in whatever amount Plaintiffs are found entitled to compensate the people and the State of Michigan for Defendants' pollution, impairment, and destruction of the environment caused by the seepage of chemical toxicants from Defendants' property into the ground and surface waters;

F. Award Plaintiffs all costs of this action, including the costs of salaries paid state employees for the investigation and enforcement of this litigation;

G. Issue an Order directing Defendants, jointly and severally, and Defendants' agents, supervisors, and employees, to scrupulously comply with all state statutes, rules, and permits governing Defendants' operations; and

H. Any other relief as the Court shall deem equitable, proper, and just.

Respectfully submitted,

FRANK J. KELLEY  
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Stewart H. Freeman  
Assistant Attorney General  
in Charge

Roger A. Schwartz  
Assistant Attorney General

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Dated: August 29, 1979

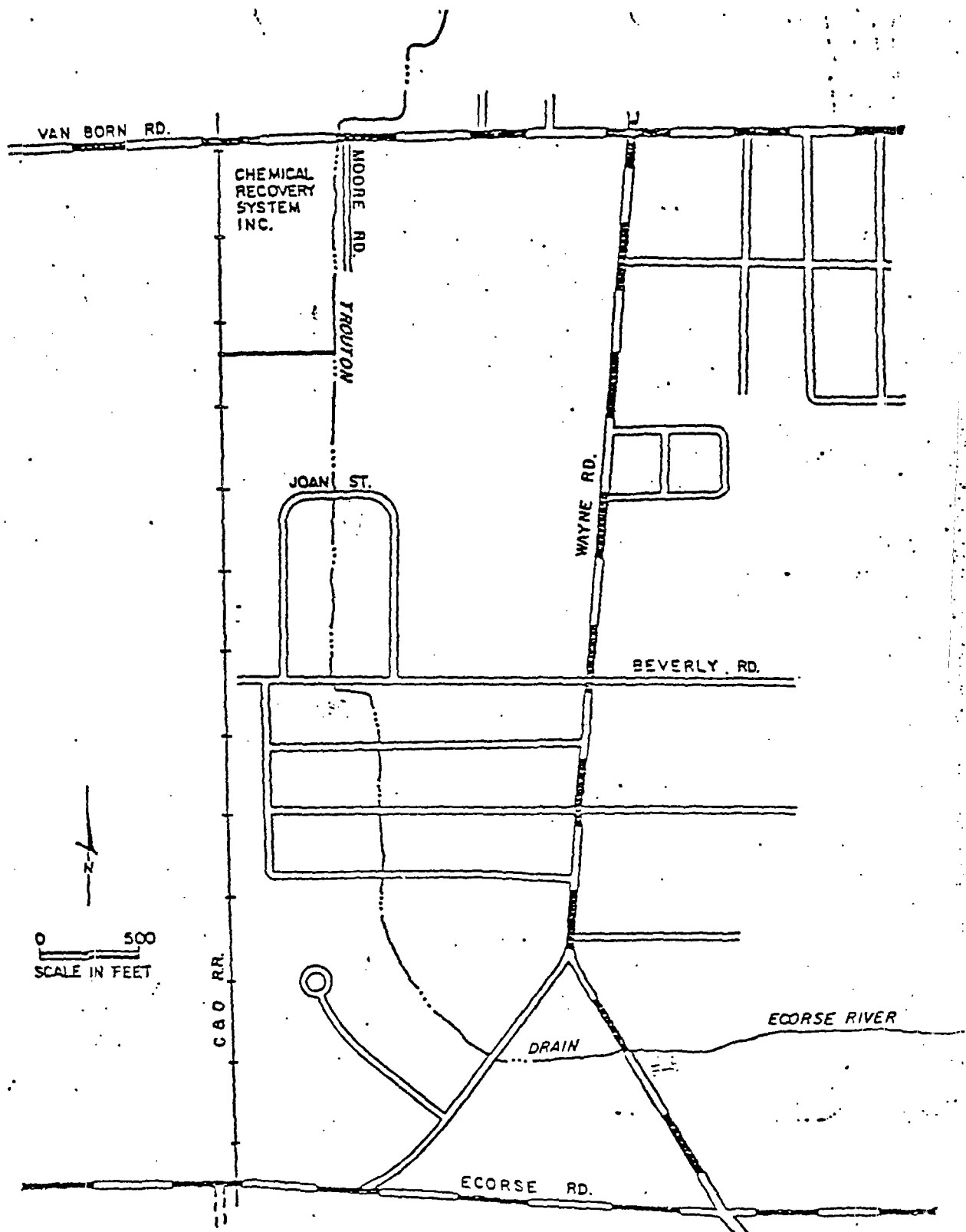


EXHIBIT 1